VOL. II

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 270

THE PRUDENCE COMPANY, INC., PETITIONER,

vs.

FIDELITY & DEPOSIT COMPANY OF MARYLAND AND AMERICAN BONDING COMPANY OF BALTIMORE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JULY 22, 1935.

CERTIORARI GRANTED OCTOBER 14, 1935.

Index to Exhibits.

PLAINTIFF'S EXHIBITS.

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4	Specifications (printed in part)	201	619
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22	Letter of A. E. Lefcourt to Prudence Co., dated Feb. 5, 1930	215	697
23	Letter from Prudence Co. to Central Park Properties dated Mar. 15, 1930	215	699

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82	2 Checks to City Collector for taxes (not printed)	334	-----
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86	Letter dated May 21, 1929, from Mr. Haas addressed to Frank Grad	477	766

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91 for Identification	Memorandum of Mr. Lush, March 6, 1930 (not printed)	492	----
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96 for Identification	Copy of memorandum of C. W. Lush, dated Mar. 5, 1930 (not printed)	547	----
97	Letter, Central Park Properties to Otis Elevator Co., dated Dec. 18, 1929	550	782

Exhibit No.		Admitted folio	Printed page
98 99 100 101 102	Mechanical Specifications (not printed)	645	-----
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104	Photograph of the Building	660	785
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106	Letter, dated May 27, 1931, from 58-59 Realty Corp., signed by Lukach, to Keeler, Inc.	686	786
107	Letter, dated April 11, 1931, from Mr. Gladstone to Mr. Lukach	984	788
108	Letter dated Oct. 16, 1929, of Central Park Properties to Frank Grad	1169	789
109	Contract, dated April 22, 1931, between 58-59 Realty Corp. and Otis Elevator Co. (printed in part)	1442	790

DEFENDANTS' EXHIBITS.

	Admitted folio	Printed page
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B—Plaintiff's Exhibits for Idenfication 45, 46, 47, 48, 49, 50 and 63, 64 and 65 (reports and estimates of Billsborrow)	429	805
C—Letter, dated Nov. 6, 1930, from Prudence Co. to Central Park Properties	460	836
D—Letter, dated Nov. 7, 1930, from Central Park Properties to Prudence Co.	460	837
E—Letter, dated Nov. 13, 1930, from Central Park Properties to Mr. Mark	461	838
F—Letter, dated April 10, 1930, from Central Park Properties to Prudence Co.	462	839
G—Specifications for heating and ventilating enclosed in foregoing letter, Exhibit F (not printed)	1079	-----
H—Plan of alterations of Mr. Lukach (not printed)	737	-----
I—Painting Contract between 58-59 Realty Corp. and Landsmann Bros. & Soffin (printed in part)	801	840
J—Contract, Central Park Properties with Globe Painting & Decorating Co., for painting		

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and decorating (printed in part)	946	847
K—Estimate submitted to Mr. Lukach, dated April 8, 1931, for painting work	960	851
L—Letter, dated January 19, 1930, from Prudence Co. to Central Park Properties	1140	852
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Q—Agreement, between Alef Corp. and Otis Elevator Co. (printed in part)	1290	863
R—Schedules of Landsman, regarding costs of papering and painting (not printed)	1396	----

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Stipulation and Order Regarding Exhibits. 1693

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

[L-52-110]

THE PRUDENCE COMPANY, INC.,
Plaintiff-Respondent,

against

FIDELITY AND DEPOSIT COMPANY OF MARYLAND and 1694
AMERICAN BONDING COMPANY OF BALTIMORE,
Defendants-Appellants.

On the annexed consent of the parties hereto, it is

ORDERED, that Plaintiff's Exhibits 3, 5, 7, 9, 34, 35, 36, 44, 69, 74, 77, 78, 79, 80, 81, 82, 83, 91, 93, 95, 96, 98, 99, 100, 101, 102 and 105 and Defendants' Exhibits G, H, P and R, need not be printed in the record herein and that Plaintiff's Exhibits 4 and 109 and Defendants' Exhibits I, J and Q be printed only in part, but that the said exhibits omitted in whole or in part may be referred to on 1695

1696 the argument and shall be deemed as part of the record as if the same had been printed herein.

Dated New York, December 5, 1934.

MANTON,
U. S. C. J.

Entry of the above order is hereby consented to.

Dated New York, December 4, 1934.

ALFRED T. DAVISON,
1697 Attorney for Plaintiff-Respondent.

THOMAS E. WHITE,
Attorney for Defendants-Appellants.

Filed Dec. 5, 1934,
U. S. C. C. A.

1698

Plaintiff's Exhibit 1.

1699

(Building Loan Agreement.)

B. L. Agt. Prudence No. 233 (3/15/27)

AGREEMENT, made this 24th day of September, 1929, between CENTRAL PARK PROPERTIES, INC., a New York corporation, having its principal place of business at No. 1359 Broadway, Borough of Manhattan, City, County and State of New York, hereinafter referred to as the Borrower, and THE PRUDENCE COMPANY, INC., a corporation organized under the laws of the State of New York, having its principal place of business at No. 331 Madison Avenue, in the Borough of Manhattan, City and 1700
State of New York, hereinafter referred to as the Lender.

WITNESSETH:

WHEREAS, the Borrower has made and hereby makes application to the Lender for a loan in the principal amount hereinafter set forth to aid the Borrower in discharging existing mortgages (if any) upon the land hereinafter described, the payment of fees and disbursements hereinafter provided for, and in the erection of the building or buildings hereinafter described, and/or to pay part of the purchase price of said land. 1701

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto agree with each other as follows:

FIRST: The Lender hereby accepts the said application upon the terms herein set forth, and provided the Borrower complies with all of the covenants, terms and conditions of this agreement, and of the bond and mortgage herein referred to, the Lender agrees to advance to the Borrower,

the principal sum of—SIX MILLION SIX HUNDRED FIFTY THOUSAND ($6,650,000.)—DOLLARS, as hereinafter set forth, and the Borrower agrees to take said loan and the advances on account thereof as and when such advances are payable, and to perform and comply with all and every of the covenants, terms and conditions herein and in said bond and mortgage contained, the obligation of the Lender to make advances being conditioned upon the compliance by the Borrower with all of said covenants, terms and conditions.

SECOND: Said loan shall be evidenced and secured by the bond of the Borrower and a mortgage, duly executed and acknowledged by all parties necessary to make such mortgage a valid first lien upon the premises described in Schedule "A" hereto annexed and appurtenances thereof, and the building or buildings and the other improvements erected and to be erected on said premises, and the equipment ~~and personal property~~ contained and to be contained therein, free and clear of all liens and encumbrances; said mortgage lien to be of such quality as the title insurance company to whom application shall be made for a policy of title insurance, will approve and insure as a valid first lien, free from all encumbrances and objections to title except such as may be waived by the Lender. Said bond and mortgage shall be on forms approved by the Lender's counsel, and shall contain such provisions as said counsel may require. ~~At the option of the Lender, the Borrower will execute on the closing, two bonds and mortgages in amounts designated by the Lender and totalling the principal amount of this loan, such mortgages to contain suitable pro-~~

~~visions for consolidation thereof upon completion of the building to be erected on said premises; if two or more bonds and mortgages are given as herein provided or are held by or assigned to the Lender as herein provided, any reference in this agreement to a "bond and mortgage" shall be deemed to include all such bonds and mortgages.~~ 1705
The Lender may take existing mortgages on the premises described in Schedule "A" by assignment at the closing of this loan ~~or upon any advance thereunder~~ and upon request by the Lender the Borrower shall arrange with any mortgagees for such assignment or assignments, and at Lender's option such mortgages shall be spread, con- 1706
solidated, modified and extended on forms approved by the Lender's counsel in conjunction with a new mortgage for the balance of principal in such manner as to create a valid first lien in the amount of this loan on a good and marketable title to the said premises of the quality hereinabove prescribed. Borrower represents that the mortgage tax of one-half of one per centum has been paid upon all mortgages now liens on the premises. The Borrower agrees to execute and/or obtain consents of stockholders, corporate certificates and any other instrument or instruments 1707
deemed necessary by the Lender or its counsel to make said bond and mortgage a valid first lien as aforesaid; all such instruments to be in form and substance satisfactory to the Lender's counsel.

THIRD: Said bond shall be conditioned for the repayment of the amounts advanced thereon on the 16th day of December, 1930; together with interest at the rate of six (6%) per centum per annum due and payable on the 16th day of Decem-

1708 ber, 1930, and quarter-annually thereafter and as hereinafter provided.

Said loan is to be advanced in such amounts and at such times as Lender approves. Accrued interest on all amounts advanced shall be due and payable at the time of each subsequent advance until the loan has been fully advanced. Interest on the full principal amount shall run from the date herein fixed for completion (whether or not the building be completed on said day), unless the full amount shall be previously advanced, in which case interest on the full amount of principal shall run from the date of the final advance. The pro-
1709 visions of this paragraph shall not relieve the Borrower from the obligation to pay interest on the quarter annual dates. ~~Both principal and interest shall be payable without deduction for any Federal or State taxes, assessments or charges, and the Borrower shall pay to the Lender semi-annually the sum of four per centum of the semi-annual interest due on said bond in lieu of normal Federal income tax (whether or not the Lender shall be obligated to pay any such tax and irrespective of the amount thereof).~~

Said bond and mortgage shall contain provi-
1710 sions accelerating the maturity of the principal and interest thereby secured.

~~Fourth: Until the amount secured by said bond and mortgage is fully paid, the owner of the mortgaged premises shall deposit in advance with the Lender whether or not it shall then be the holder of said bond and mortgage, on the first day of each month, _____, beginning _____ _____ 19___, and _____ thereafter, the equal proportionate part of the principal and interest falling due on said bond on the next suc-~~

ceeding interest date and the equal proportionate part of the taxes which will fall due nearest such interest date (whether before or after), such proportionate parts of principal, interest and taxes to be fully deposited on or before the first day of the month preceding the dates upon which the same respectively from time to time become due. Said deposits shall be held by the Lender without interest to the depositor and applied as follows: So much of said deposits as may be required to pay the taxes shall be reserved, and used to pay the same and the balance shall be applied on interest dates for the other purposes for which deposited. If the taxes payable for the current calendar year have not been fixed at any time specified for the deposit thereof, then the amount of such deposit shall be computed upon the basis of the taxes assessed for the immediately preceding year. 1711 1712

FIFTH: The payment of principal and interest on said bond and mortgage, as and when the same shall become due, and all other payments required to be made hereunder, and the performance by the Borrower of all the covenants and agreements herein contained, shall be guaranteed jointly and severally by ABRAHAM E. LEFCOURT; and such guarantee shall become null and void when the Municipal and State Departments having jurisdiction of the building described herein have issued the customary certificates of occupancy, and the Borrower agrees to obtain and deliver such guarantee in form satisfactory to the Lender's counsel. 1713

SIXTH: The maturity of the principal sum secured by said bond and mortgage or so much

thereof as has been advanced shall be accelerated at the option of the Lender, and said principal sum shall become and be due and payable at the option of the Lender, upon the happening of any of the events specified in paragraph "Eighth" hereof, and if the Lender shall exercise such option, it shall give notice to the Borrower in the manner herein provided, fixing the date upon which the principal sum secured by said bond and mortgage shall become and be due and payable, and if such notice be given, said principal sum and accrued interest shall become and be due and payable on the day fixed in said notice in the same manner and with the same force and effect as though the day fixed in said notice were the day specified in said bond and mortgage for the maturity thereof.

SEVENTH: The Lender or any holder of said bond and mortgage may extend the time of payment of the principal secured by said bond and mortgage and any extension so granted shall be deemed made in pursuance of this agreement and not to be a modification thereof. The amortization provisions (if any), interest rate and times when the principal and interest thereunder shall be due and payable may be modified or changed by consent of the Lender and Borrower, and such modifications or changes may be incorporated in the bond and mortgage or in a supplemental agreement without the execution and filing of an amended or supplemental building loan agreement.

EIGHTH: In either of the following events, prior to the final advance, the Lender's obligation to make further advances shall cease, and the princi-

pal sum secured by said bond and mortgage, or so much thereof as shall have been advanced, and the interest thereon, shall at the option of the Lender become and be due and payable: 1717

1. If any mechanics lien or liens be filed against said premises and remain undischarged for / ~~ten~~ twenty days.

2. If the Lender shall not approve of the payment called for because of some act, encumbrance or question arising after the making of the preceding payment.

1718

3. If the Borrower assigns this contract or said advances or any interest therein, or if said premises be conveyed or encumbered in any way, unless the Lender consent thereto in writing.

4. If the improvements on said premises, or any building which may be erected or in process of erection upon said premises shall materially encroach upon the street or upon adjoining property or violate any covenants or restrictions against the premises.

5. If the improvements on said premises be materially injured or destroyed by fire or otherwise. 1719

6. If the makers of said bond and mortgage and/or any extension agreement shall fail to comply with any of the covenants therein contained.

7. If any materials, fixtures or articles used in the construction or equipment of the building or appurtenant thereto be not purchased by the owner of the land so that the ownership thereof will vest in said owner free from encumbrance, on delivery at the premises.

1720 8. If the Borrower does not erect said building strictly in accordance with plans and specifications, approved in writing by the Lender and conforming with all laws and municipal regulations, orders and requirements.

9. If the Borrower shall fail or refuse to cause the construction of said building, to proceed with all due diligence, or if said building be not completed and ready for occupancy on or before the date herein fixed for completion.

10. If the materials or construction of the building be not satisfactory to the Lender.

1721 11. If a petition in bankruptcy be filed by or against the Borrower.

12. If default be made in the payment of interest upon any of the mortgages herein mentioned.

13. If any note or notices of violation of law or of any Municipal regulation or ordinance be filed against the premises or be issued by any public department or authority against the building or against the premises or against the Borrower, by reason of any matter in or about the
1722 construction of the building, and remain uncomplied with for a period of five days.

14. If the owners of said premises do not permit a representative of the Lender to enter upon said premises and inspect the building thereon at all reasonable times during construction.

15. If the Borrower fails to comply with any of the provisions of this agreement, or, after twenty days' notice and demand, with any other

reasonable requirement of the Lender not specifically incorporated in the instruments covering this loan. 1723

The provisions of paragraph "Eighth" are in addition to, and not in any manner in limitation of, the provisions of said bond and mortgage.

NINTH: No advance shall be due unless all work usually done at the stage of construction when the advance is applied for be done in a good and workmanlike manner, and all material and fixtures usually furnished and installed at such stage of construction be furnished and installed, the final advance shall not be due and payable 1724 until the Borrower shall obtain and deliver to the Lender the usual certificate of completion issued by the Building Department, and in case the building be one to which the provisions of the Tenement House Law apply, until the Borrower shall produce and deliver to the Lender the usual certificate issued by the Tenement House Department that said building conforms in all respects to the requirements of the Tenement House Law. Advances may be made as and when the Lender or holder of the mortgage believes it advisable so to do, and all such advances or payments shall be 1725 deemed to have been made in pursuance of this agreement and not in modification thereof. The making of any advance or any part of an advance shall not be deemed an approval or acceptance by the Lender or the holder of the mortgage of the work theretofore done. The Lender may make any advance or part of any advance after the happening of any of the events specified in paragraph "Eighth" of this agreement without thereby waiving the right to demand payment of the mort-

1726 gage debt and without becoming liable to make any other or further advance. The Lender may apply any part of any advance in payment of interest or taxes due, and the amounts so applied shall be deemed advanced to the Borrower. The Lender may at any time release portions of the mortgaged premises, upon receiving what, in the opinion of the Lender, is a proper payment on account of the mortgage debt.

The Borrower covenants on demand of Lender to exhibit to Lender at any time and from time to time the original contract or contracts (in their entirety) for or relating to heating and refrigerat-
1727 ing equipment, plumbing fixtures, ranges, kitchen cabinets, gas and electric fixtures, vacuum cleaning system, sprinkling system or other items or fixtures installed or to be installed in the said building or entering into the equipment or construction thereof, and on demand the Borrower agrees to furnish to Lender duplicate copies of any such contract or contracts.

All advances are to be made at the office of THE PRUDENCE COMPANY, INC., 162 Remsen Street, Brooklyn, N. Y., and the Borrower shall give to the Lender three days' notice in writing before
1728 demanding any advance. Applications for advances shall set forth in detail the work incorporated in the building to date of applications, together with the cost of each item. On each succeeding advance, if lender requests, receipted vouchers showing application of funds from the preceding advance on account of the construction of the building shall be presented. Advances when approved shall be made within five days after receipt of application.

TENTH: The Borrower agrees to erect upon the 1729
premises described in Schedule "A", the building more particularly described in Schedule "B" hereto attached and install the equipment therein referred to. Said building shall be erected according to the plans and specifications submitted to and approved in writing by the Lender and shall contain at least 7,000,000 cubic feet. The cubic contents of said building shall be computed from a point four inches below the top of the finished cellar floor to the average height of the top of the roof beams. The Borrower agrees that prior to the time when the Lender shall be required to make any advance under this agreement, 1730
the Borrower will cause said plans to be filed with the Municipal Departments having jurisdiction, and will obtain the approval of such departments to such plans; and the Borrower further agrees that the Lender shall not be required to make advances hereunder if said plans are amended or changed, unless such amendment or change be approved by the Municipal Departments having jurisdiction, and by the Lender. Lender shall have the privilege of placing and keeping neat advertising signs on said building during the course of construction, but borrower shall move 1731
and replace said signs on the building as becomes necessary during construction.

The borrower agrees to cause the work of construction and equipment of said building to proceed in a good and workmanlike manner and to cause said building to be completed and ready for occupancy not later than December 16th, 1930, (said day being the date herein fixed for completion), delays by strikes and lockouts excepted.;

1732 said construction work shall commence on or before September 23rd, 1929.

ELEVENTH: The Borrower shall furnish to the
$3,000,000.
Lender a surety bond in the amount of ~~this loan,~~ in a company satisfactory to Lender, to be in form and contents satisfactory to Lender, conditioned upon and guaranteeing completion of said building within the time hereinafter specified in strict accordance with said plans and specifications and this agreement and free from claims or liens.

TWELFTH: Upon the happening of any or either
1733 of the events specified in this paragraph prior to the final advance, the Borrower expressly authorizes and empowers the Lender, at the option of the Lender, to enter upon the demised premises and take possession of all building material, equipment and similar items whether the same be in the premises or on the street in front of or adjacent thereto and thenceforth, at the option of the Lender proceed with the construction of the building and completion thereof, and in connection therewith, to use any material, equipment or similar items in or near the premises and to expend
1734 such sums of money and to make such contracts in the name of the Borrower with respect to the erection and completion of said building, as the Lender may deem proper or necessary to accomplish the completion of the building, or at the option of the Lender, the Lender may advance for the account of the Borrower, moneys sufficient to discharge, correct or remedy any of the items below specified, it being understood and agreed that the Lender shall be under no obligation so to do. The events and items referred to are as follows:

(a) If any mechanic's lien or liens be filed against the premises and remain undischarged for twenty / ~~ten~~ days. 1735

(b) If the building be unprotected or unguarded, or be vacant or deserted.

(c) If any action be brought to foreclose the mortgage or mortgages herein provided for, or either of them.

(d) If the construction of the building is not carried on with reasonable dispatch or if such construction be discontinued at any time, or if such construction be carried on in such manner that the architect or engineer of the Lender shall certify in writing that proper progress is not being made in the construction of the building. 1736

Any sums paid or expended in accordance with the provisions of this paragraph shall be deemed advanced to the Borrower and shall be secured by said bond and the mortgage accompanying the same, and at the option of the holder of said bond and mortgage may be deducted from any balance of principal not theretofore advanced, and if the amounts so expended plus amounts theretofore advanced and accrued interest, shall at any time exceed the principal sum of said bond and mortgage, any such excess shall be deemed added to the principal sum secured by said bond and mortgage and be secured thereby, together with interest at the rate of six per centum per annum, and at the time of the advance by the Lender of each and every sum in excess of the original principal amount of said bond and mortgage, the Lender is authorized to make, execute, acknowl- 1737

edge and deliver a certificate as to the excess amount so advanced, and on behalf of the Borrower to execute, acknowledge and deliver such certificate as the attorney in fact of the Borrower hereby appointed for that purpose, and said certificate, as and when executed and delivered, shall have the force and effect of increasing the lien of the bond and mortgage herein provided for, to the extent set forth in such certificate, plus any mortgage tax required to be paid upon recording such certificate, and the amount so certified, plus such mortgage tax, shall, for all purposes, be secured by said bond and mortgage and be collectible thereunder.

THIRTEENTH: During the construction of the building, the Lender and the holder of the mortgage, and the Lender's Architect and Engineer, are authorized and empowered from time to time to enter upon the premises and inspect the building, and on demand the Borrower agrees to supply, if required by such Architect and/or Engineer, copies of all plans, detailed plans, shop drawings and specifications relating to the construction of the building; and they are further authorized and empowered to examine all plans, detailed plans, shop drawings and specifications which are kept at the work. The Borrower shall pay Lender's inspection fees.

FOURTEENTH: Borrower shall place through Remsen Brokerage Company, Inc., 166 Remsen Street, Brooklyn, N. Y., or any other insurance broker, designated by The Prudence Company, Inc., from the date hereof until the expiration of

said mortgage, all fire, lightning, ~~workmen's compensation, tornado, flood, earthquake~~ and steam boiler explosion insurance together with any other insurance deemed necessary by Lender, and any surety company bonds, affecting the buildings and improvements on said premises. 1741

FIFTEENTH: The Borrower agrees to pay the recording tax upon the mortgage, the cost of revenue stamps on the bond, the charges for drawing and recording papers, and for all searches which may be required by the Lender to satisfy the Lender that the mortgage is a lien as herein covenanted, also, the charges of the title company insuring the title to the Lender for examination of title, advances and policy of mortgage insurance, the application for such insurance to be placed through the Lender's attorney; the Borrower shall from time to time furnish to the Lender, or the Lender may procure at the expense of the Borrower, surveys made by a surveyor satisfactory to the Lender, whenever the Lender shall require such surveys. The Borrower also agrees to pay to the Lender a fee of FOUR HUNDRED THOUSAND DOLLARS ($400,000.) ($25,000.) of which has been heretofore paid and the receipt whereof is hereby acknowledged), ~~DOLLARS~~ at the date hereinafter set for closing, as part consideration for the Lender's agreement to make this loan. ~~If the Borrower refuses or fails to close this loan, and to execute and deliver the instruments herein provided for, and if the Lender be not in default, the entire damages which Lender will thereby sustain cannot be determined exactly therefore the Borrower and the Lender hereby agree that in the~~ 1742 1743

1744 ~~event of such default upon Borrower's part, the Borrower shall pay to the Lender the amount of said fee on the date herein set forth for closing, as liquidated damages for the refusal or failure of the Borrower to perform this agreement completely, or at the Lender's option, in case of such default by the Borrower, the Lender may require that the Borrower fully comply with all the terms of this agreement.~~

SIXTEENTH: This loan shall close at the office of 331 Madison Ave.,

THE PRUDENCE COMPANY, INC., ~~162 Remsen Street,~~
1745 New York City,
~~Brooklyn, N. Y.,~~ on September 24th, 1929, ~~or prior thereto upon five days' written notice to the Bor-~~ and said time of closing shall be of the essence of this agreement. The Borrower agrees at the time of closing to execute and deliver said bond and mortgage and all other instruments herein provided for. The Borrower shall not use a corporate name containing the words "Prudence" or "Realty Associates" or any word similar thereto.

SEVENTEENTH: The Borrower agrees to erect upon the premises described in Schedule "A" the
1746 building more particularly described in Schedule "B" according to the plans and specifications prepared by FRANK GRAD, Architect, of No. 521 Fifth Avenue, New York City, heretofore submitted to the Lender, and amendments thereto made by the Lender in a memorandum dated September 24th, 1929, and initialed by the Lender and Borrower.

EIGHTEENTH: The Borrower agrees that it has caused the aforesaid plans for the building to be erected on the premises described in Schedule "A" herein, to be filed with the Municipal and State departments having jurisdiction thereof, and that the Borrower will obtain the approval of such plans by said departments on or before said closing date, and it is understood and agreed that the Lender shall not be required to make any advances of the loan herein provided for unless at or prior to said closing date the Borrower shall exhibit to the Lender the proper permits and certificates of approval of said plans issued by the departments having jurisdiction thereof, authorizing the erection of the building shown on the plans referred to herein and such approval and permits shall be in full force and effect on the day of the closing of this loan. 1747 1748

NINETEENTH: Subject to all of the terms, covenants and conditions of this agreement, the Lender agrees to make to the Borrower at the time of closing herein set forth, a first advance of THREE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS ($3,250,000.) gross, and such advance may be made by the Lender without the approval of the appraisers of the Lender, anything herein contained to the contrary notwithstanding. Out of said first advance of THREE MILLION TWO HUNDRED AND FIFTY THOUSAND DOLLARS ($3,250,000.), the Borrower agrees to pay to the Lender all fees, commissions, disbursements and other charges agreed to be paid by the Borrower herein. All subsequent advances shall be made by the Lender to the Borrower on the basis of seventy-five per- 1749

1750 cent of the value of the labor and materials installed and incorporated in the construction of the building described in Schedule "B" herein, as determined by the appraisers of the lender.

In the event that any of the equipment provided for in said plans and specifications has not been installed in the building described herein, the Lender shall retain from the final advance a sum of money equal to the cost of such equipment to be held by the Lender until the installation thereof in said building.

TWENTIETH: The Borrower represents to the
1751 Lender that BARCLAY-ARROW HOLDING CORPORATION is now the owner and holder of a mortgage in principal amount TWO MILLION DOLLARS ($2,000,000.) upon which the principal sum of ONE MILLION FOUR HUNDRED THOUSAND DOLLARS ($1,400,000.) is now owing, covering the premises described in Schedule "A" and that there is an agreement made in connection with said mortgage now in full force and effect, which provided that upon the completion of the building to be erected on the premises described in Schedule "A" hereof, as herein provided, the holder of said mortgage will advance to the holder of said premises
1752 and additional sum of SIX HUNDRED THOUSAND DOLLARS ($600,000.), making said mortgage a lien upon said premises in the principal sum of TWO MILLION DOLLARS ($2,000,000.), and the Borrower further represents that said agreement to advance the additional sum of SIX HUNDRED THOUSAND DOLLARS ($600,000.) on said mortgage of TWO MILLION DOLLARS ($2,000,000.) is guaranteed by Frederick Brown. The Borrower further repre-

sents that said mortgage of Two Million Dollars 1753
($2,000,000.) shall be and continue to be subject and subordinate to the first mortgage of Six Million Six Hundred and Fifty Thousand Dollars ($6,650,000.) and interest to be made by the Borrower to the Lender as herein provided, and to all advances at any time made thereon, and the Borrower agrees to obtain an agreement in form and substance satisfactory to counsel for the Lender, subordinating said mortgage of Two Million Dollars ($2,000,000.) to said first mortgage of Six Million Six Hundred and Fifty Thousand Dollars ($6,650,000.) to be made to the Lender.

The failure of the Lender to require the strict 1754
performance in any one or more instances of any of the terms, covenants and conditions of this agreement shall not be construed as waiving, releasing or relinquishing for the future any such terms, covenants or conditions, but the same shall continue and remain in full force and effect.

Any notice by the Lender to the Borrower may be given and shall be deemed to have been duly given if either delivered personally or mailed in any general or branch Post Office in New York City, enclosed in a registered postpaid envelope, addressed to the Borrower at No. 1359 Broadway, 1755
Borough of Manhattan, City, County and State of New York, and if an address for notices has been duly changed, as herein provided, if so enclosed, mailed and addressed to the changed address. The Borrower may at any time change the address for notices by delivering or mailing as aforesaid, to the Lender at least five days' notice stating the change and setting forth the changed address.

1756 THE STIPULATIONS aforesaid apply to and bind the successors of the respective parties. This contract shall not be assigned, except with the written consent of the Lender.

IN WITNESS WHEREOF, the parties hereto have duly signed and sealed these presents the day and year first above written.

CENTRAL PARK PROPERTIES, INC.,
By: AELEFCOURT
President.

THE PRUDENCE COMPANY, INC.,
1757 OK
A.J.
By: H.E. MERRIAM
Vice Pres.

MBIGELOW
Asst Secy

[SEAL]

ATTEST:

LOUIS HAAS,
Secretary.

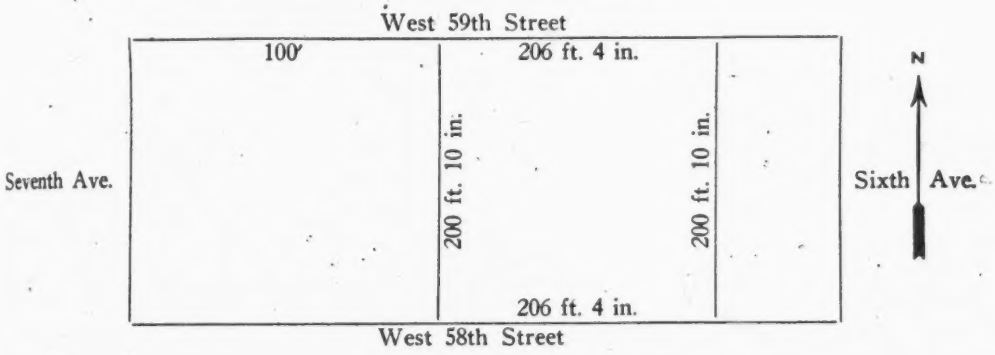
[SEAL]

1758

SCHEDULE A. 1759

Description of Premises.

The mortgage herein referred to shall cover premises situated in the Borough of Manhattan, County of New York City and State of New York, bounded and described as follows:



1760

SCHEDULE B.

Description of Building and Equipment.

The Borrower will erect on the premises described in Schedule "A", a modern 40 story and basement fireproof hotel, containing 1269 rooms and 687 bathrooms, together with the usual equipment installed in buildings of this type, which shall not include hotel furniture and furnishings. 1761

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:
CITY OF NEW YORK,

On this 25th day of September, in the year one thousand nine hundred and twenty-nine, before me personally came ABRAHAM E. LEFCOURT, to me

known, who, being by me duly sworn, did depose and say, that he resides in Borough of Manhattan, New York City; that he is the President of the CENTRAL PARK PROPERTIES, INC., the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

ALEXANDER JOHNSTON

ALEXANDER JOHNSTON
Notary Public, Kings County
Kings Co. Clerk's No. 83, Reg. No. 198
N. Y. Co. Clerk's No. 252; Reg. No. 0-170
Bronx Co. Clerk's No. 17; Reg. No. 3045
Queens Co. Clerk's No. 1517; Reg. No. 4341
Commission expires March 30, 1930

STATE OF NEW YORK,
COUNTY OF NEW YORK,
CITY OF NEW YORK, } ss.:

On this 25th day of September, in the year one thousand nine hundred and twenty-nine, before me personally came H. E. MERRIAM, to me known, who, being by me duly sworn, did depose and say, that he resides in Borough of Brooklyn, New York City; that he is the Vice President of THE PRUDENCE COMPANY, INC., the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of said corporation; that the seal affixed to said instrument is

such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order. 1765

ALEXANDER JOHNSTON
ALEXANDER JOHNSTON
Notary Public, Kings County
Kings Co. Clerk's No. 83, Reg. No. 198
N. Y. Co. Clerk's No. 252; Reg. No. 0-170
Bronx Co. Clerk's No. 17; Reg. No. 3045
Queens Co. Clerk's No. 1517; Reg. No. 4341
Commission expires March 30, 1930

(Endorsements on back of Building Loan Agreement.) 1766

No. 10632

CENTRAL PARK PROPERTIES, INC.,

WITH

THE PRUDENCE COMPANY, INC.

BUILDING LOAN AGREEMENT

THE LAND AFFECTED BY THE WITHIN INSTRUMENT LIES IN SECTION 4 IN BLOCK 1011 1767
ON THE LAND MAP OF THE COUNTY OF
New York.

ORIGINAL FILED IN.....

BY.....

DATE.....

1768 SUGGESTIONS AND REMINDERS TO THE BORROWER:

1. The borrower should immediately order and furnish to lender a survey of the premises acceptable to and guaranteed to the Title Company.

2. If there are any unpaid franchise taxes against the borrower or any corporation in the chain of title, the borrower should immediately arrange for the filing of reports with the proper State authorities and the payment of such taxes.

3. The borrower should immediately cause the removal of any violations filed against the prem-
1769 ises by any department of the City or State of New York or any municipality, and dispose of any mechanics' liens or other liens upon or objections to the title of the premises.

4. The borrower should produce at the closing, tax and water receipts and franchise tax receipts for the current year, with insurance policies now on premises and also any leases, easement, setback or other agreements affecting the premises.

5. The lender will appreciate having you bring to the attention of any mortgagee receiving money at the closing, that Prudence-Bonds and Prudence
1770 Mortgage Certificates secured by first mortgages on improved, income-producing property, are available for reinvestment of such funds.

Plaintiff's Exhibit 2.

1771

(Surety Bond.)

Prudence Completion Bond No. 287

KNOW ALL MEN BY THESE PRESENTS: That we, CENTRAL PARK PROPERTIES, INC., a New York corporation, having its principal place of business at No. 1359 Broadway, in the Borough of Manhattan, City, County and State of New York; (hereinafter sometimes called the "Principal"), as Principal, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation organized and existing under the Laws of Maryland, and authorized to transact business in the State of New York, having an office 1772
at No. 55 Liberty Street, in the Borough of Manhattan, City, County and State of New York, and AMERICAN BONDING COMPANY OF BALTIMORE, a corporation organized and existing under the Laws of Maryland, and authorized to transact business in the State of New York, having an office at No. 16 Court Street, Borough of Brooklyn, County of Kings, City and State of New York, (hereinafter sometimes called the "Surety"), as Sureties, are jointly and severally held and firmly bound unto THE PRUDENCE COMPANY, INC., a New York corporation, having its principal place of business at No. 331 Madison Avenue, in the Borough of 1773
Manhattan, City, County and State of New York, (hereinafter sometimes called the Obligee), as OBLIGEE, in the principal sum of THREE MILLION ($3,000,000.) DOLLARS, lawful money of the United States of America, for the payment whereof to the said Obligee, its successors and assigns, the said Principal and the said Sureties hereby bind themselves and their respective successors and assigns, jointly and severally firmly by these presents.

Sealed with our seals and dated the 25th day of September, in the year one thousand nine hundred and twenty-nine.

WHEREAS, the said Principal and the said Obligee have entered into a certain building loan agreement dated the 24th day of September, 1929, and duly filed in the office of the Clerk of the County of New York on the day of September, 1929, providing among other things for a certain building loan in the principal amount of SIX MILLION SIX HUNDRED AND FIFTY THOUSAND ($6,650,000) DOLLARS, to be made by the Obligee to the Principal, upon the terms and conditions therein set forth and to be secured by the bond and first mortgage of the Principal, covering premises located in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the southerly side of 59th Street, distant one hundred feet (100′) easterly from the corner formed by the intersection of the easterly side of 7th Avenue with the southerly side of 59th Street; thence southerly and parallel with 7th Avenue two hundred feet ten inches (200′ 10″) to the northerly side of 58th Street; thence easterly along the northerly side of 58th Street two hundred six feet four inches (206′ 4″); thence northerly again parallel with 7th Avenue two hundred feet ten inches (200′ 10″) to the southerly side of 59th Street; thence westerly along the southerly side of 59th Street two hundred six feet four inches (206′ 4″) to the point or place of beginning. and said building loan agreement and all and singular the terms thereof are hereby made a part of this bond by reference

thereto with the same force and effect as if set forth in full in the body hereof, being hereinafter referred to as the "building loan agreement"; and, 1777

WHEREAS, the Principal, among other things, has agreed to erect, construct and complete on the said described premises a modern forty (40) story and basement fireproof hotel containing twelve hundred and sixty-nine (1269) rooms and six hundred eighty-seven (687) bathrooms, together with electric refrigeration and the usual equipment installed in buildings of this type, excepting hotel furniture and furnishings; and, 1778

WHEREAS, the said building is to be erected, constructed and completed in accordance with the plans and specifications prepared by FRANK GRAD, Architect, of No. 521 Fifth Avenue, New York City, heretofore delivered by the Principal to the Obligee, and amendments thereto made by the Obligee in a memorandum dated September 24, 1929, and said plans and specifications and the amendments thereto ~~and also in accordance with the existing standard specification requirements of the Obligee for the construction of fireproof buildings, and said plans and specifications and said standard specification requirements~~ are hereby referred to and incorporated in and made a part hereof with the same force and effect as if set forth in full in the body hereof, being hereinafter together referred to as the "plans and specifications"; and, 1779

WHEREAS, pursuant to the provisions of said building loan agreement the Principal has made, executed and delivered, or is about to make, execute and deliver to the Obligee, its certain bond

and first mortgage, each dated September 24th, 1929, in principal amount FOUR MILLION ONE HUNDRED FIFTY THOUSAND DOLLARS ($4,150,000.), covering the said described premises, and said Principal and Obligee have entered into, or are about to enter into, a certain agreement bearing even date with said bond and mortgage, spreading the liens of four certain other mortgages on which there remains unpaid the aggregate principal sum of TWO MILLION FIVE HUNDRED THOUSAND DOLLARS ($2,500,000.) over the said described premises, and consolidating said four mortgages with the above described mortgage of FOUR MILLION ONE HUNDRED FIFTY THOUSAND DOLLARS ($4,150,000.) into a single first mortgage in the principal amount of SIX MILLION SIX HUNDRED FIFTY THOUSAND DOLLARS ($6,650,000.), covering said described premises; and,

~~WHEREAS, pursuant to the provisions of said building loan agreement, the Principal has made, executed and delivered to the Obligee its certain bond and first mortgage, respectively dated ; in principal amount DOLLARS, covering the said described premises; and,~~

WHEREAS, the Principal has agreed to deliver of $3,000,000., to the Obligee a surety bond in the amount/~~of said loan~~ in a company satisfactory to the Obligee, to be in form and contents satisfactory to the Obligee, conditioned upon and guaranteeing completion of the said described building not later than the 16th day of December, 1930, in strict accordance with the said building loan agreement and the said plans and specifications and free from

liens or claims, and the Obligee has consented to accept this bond; and, 1783

WHEREAS, the Principal and Surety are thoroughly familiar with all of the terms, provisions, conditions and requirements contained in said building loan agreement and with the said plans and specifications and all of the details thereof, and are duly authorized and empowered to make, execute and deliver this bond by their respective boards of directors;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH:

THAT IF the said Principal shall from the date hereof continuously proceed with reasonable speed and in a workmanlike manner with the construction and completion of said building in accordance with the terms, provisions and conditions of said building loan agreement and the said plans and specifications, so that the said building shall be well and truly constructed and completed in strict accordance with said building loan agreement and with said plans and specifications and fully completed and ready for occupancy as a modern hotel not later than the 16th day of December, 1930, together with all equipment ~~and furnishings~~ customary in a building of the type provided for in said building loan agreement, installed not later than the said 16th day of December, 1930, in all respects fully complying with the building Code of the City of New York,
and with all laws, rules, ordinances, regulations and requirements of the County of New York, City of New York, and State of New York,
and any governmental bureau, department, officer or agent applicable to the erection 1784 1785

and construction of said building or to the use and occupancy thereof, and the Board of Fire Underwriters having jurisdiction thereof, and free and clear of and from any and all mechanics' or materialmen's liens or other liens, claims of architects, conditional sale contracts, chattel mortgages and charges for work and labor performed or for materials, machinery, fixtures, refrigerating units, appliances, equipment ~~or furnishings~~ used, ~~furnished~~ or installed in or about the said building, and any municipal violations against said premises and the improvements thereon; AND IF said Principal shall pay the entire cost of the erection, construction and completion of said building, and for all equipment ~~and furnishings~~ to be installed therein in accordance with said building loan agreement and plans and specifications; AND IF the said Surety shall fully indemnify and save harmless said Obligee, its successors and assigns, from and against any and all loss or damage by reason of failure of the Principal to construct, fully pay for and complete said building and install, supply and fully pay for such equipment ~~and furnishings~~ within the time aforesaid and as provided for in said building loan agreement and plans and specifications; AND IF said Surety shall make good any and every default on the part of the Principal in constructing, paying for and completing said building and supplying, installing and paying for equipment ~~and furnishings~~ as aforesaid, and shall make good any and every other default by the Principal in performing any of the other terms, covenants or conditions in said building loan agreement set forth by the Principal to be kept and performed up to

and including the completion of and payment for 1789
said building and installation of and payment for said equipment ~~and furnishings~~ in accordance with said building loan agreement and plans and specifications, free and clear as aforesaid, within the time aforesaid and in the manner that the Principal is obligated to keep and perform the same, and shall fully indemnify and save harmless the Obligee, its successors and assigns, from and against any and all loss or damage by reason of any and all claims, costs, suits, judgments, counsel fees and damages which may be incurred or suffered by the Obligee in making good any default on the part of the Principal and/or Surety, and 1790
shall fully comply with the terms, covenants and conditions hereinbefore and hereinafter set forth on the part of the Principal and/or Surety to be performed; THEN this obligation to be and become void, otherwise to remain in full force and effect.

AND THE PRINCIPAL AND SURETY JOINTLY AND SEVERALLY COVENANT AND AGREE WITH THE OBLIGEE AS FOLLOWS:

FIRST: Immediately upon either the premises being vacated or deserted or upon any default by the Principal and/or Surety, the Obligee may em- 1791
ploy watchmen for the protection of the premises and materials thereon and the work theretofore performed and may enter upon the premises and may take possession of the same and of all materials, plant, machinery, tools, appliances, equipment ~~and furnishings~~ on the premises and may do anything necessary or proper in the judgment of the Obligee to protect the property from the elements, depredation or other injury or damage, and the Principal and Surety jointly and severally

1792 agree to repay to the Obligee on demand any and all sums of money paid by the Obligee for the purposes authorized by this paragraph, with interest at the rate of six per centum per annum from the time or times of any such payment or payments made by the Obligee.

SECOND: In the event of any default on the part of the Principal, the Obligee agrees to deliver to the Surety a written notice of such default within thirty days after at least two executive officers of the Obligee shall have actual notice of such default. The Principal agrees
1793 that the Surety shall have the right within twenty days after receipt of such notice to diligently proceed with or procure others to diligently proceed with the construction and completion of said building and the supplying and installing of equipment ~~and furnishings~~ therein and performance of the other obligations hereunder as the same are agreed to be performed by the Principal and within the time aforesaid, and the Obligee by the acceptance of this bond consents to the exercise of such right by the Surety. And the Principal and Obligee agree that in the event the Surety exercises such right, then the Obligee shall (so long
1794 as no mechanics' lien or other liens are filed against the premises and there are no encumbrances thereon) place at the disposal of the Surety for its use in the exercise of such right, unadvanced amounts of money which would have been receivable by the Principal from the Obligee under said building loan if the Principal had not committed any default, and the amounts to be placed at the disposal of the Surety as aforesaid shall be paid by the Obligee to the Surety upon application for advances to be made by the Surety

under and subject to the terms of said building loan agreement covering payments of advances to said Principal in the same manner and to the same effect and with the same requirements as to freedom from lien, encumbrances, title defects and as to payment of interest, taxes, insurance premiums and otherwise as if such applications were in fact made by the Principal. The amounts of money which may be payable by the Obligee to the Surety in any contingency pursuant to the provisions of this paragraph are expressly limited to the amounts not theretofore advanced or applied by the Obligee under said building loan and are subject to the aforesaid conditions upon the making of such advances. Applications for unadvanced moneys shall be made in writing and shall specify in detail the work incorporated in the building from the date on which the Surety exercises such right, until the date or dates of application, together with the cost of each item, and such applications shall not be made by the Surety more than once in any calendar month. Should any amounts of money not advanced by the Obligee to the Principal under said building loan or applied thereunder, be and become payable to the Surety under the provisions of this paragraph, then and in such case the Principal hereby irrevocably authorizes, empowers and directs the Obligee, its successors or assigns, to accept the receipt of the Surety or its duly authorized officer or officers, agent or agents, on the bond or obligations of the Principal made to the Obligee evidencing said loan for any and all advances made by the Obligee to the Surety in accordance with the provisions hereof, and any and all such advances so made shall be fully secured by the bond and mortgage

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hereinbefore referred to with the same force and effect as if the advances were made directly to the said Principal, and any receipt for moneys so paid to the Surety on the said bond or obligations of the Principal may be made in the name of the Principal by the Surety as agent and attorney-in-fact irrevocably hereby duly authorized, or by the Surety in its own name, with the same force and effect as if such payments had been made to the Principal itself on its said bond or obligations and receipt therefor had been given by the Principal, and the Obligee, its successors or assigns, are likewise hereby irrevocably authorized to accept as the act of the Principal any payment, receipt, check endorsement or other paper or instruments made by the Surety in connection with any such advance or advances of principal made to the Surety, as binding upon the Principal and with the same force and effect as if the same were in fact made by the Principal. Anything herein contained to the contrary notwithstanding, it is a condition precedent to any and every such advance paid to the Surety that each and every such advance be so made as to be secured by the first lien of such mortgage, and that any such advance to the Surety shall be made in manner satisfactory to the title company employed to insure the first lien of said mortgage so that it will so insure the same to the extent of the full amount of moneys advanced thereon. The provisions of this paragraph "Second" shall not in any event relieve the Surety from performance of any of its obligations under this bond and all moneys required to cure any default shall be provided by the Principal and/or Surety.

THIRD: Should the Obligee give the Surety written notice of any default of the Principal as aforesaid, and (1) should the Surety for twenty days after receipt of such notice fail to diligently proceed with or procure others to diligently proceed with the construction and completion of said building and the supplying and installation of said equipment ~~and furnishings~~ therein, or (2) if the Surety shall proceed with or procure others to proceed with the work and at any time thereafter shall default in diligently and continuously proceeding with the construction and completion of said building and the supplying and installation of said equipment ~~and furnishings~~ therein, as aforesaid, free and clear of and from all mechanics' and materialmen's liens or other liens, claims of architects, conditional sale contracts, chattel mortgages and charges for work and labor performed or for materials, machinery, fixtures, appliances, equipment ~~or furnishings~~ used, furnished or installed in or about the said building, and free from municipal violations against the premises or improvements thereon, or (3) if the Surety shall default in performance of any of the other obligations of the Principal, as the same are agreed to be performed by the Principal and within the time aforesaid; then, upon the happening of any or either of such events, the Obligee (in addition to being authorized to exercise all of the powers granted by paragraph "First" hereof) shall be entitled to take over and use all materials, plant, machinery, tools, appliances, equipment and furnishings on the premises or on the street or sidewalks or on areas or other places adjacent or near to said premises in and toward the construction and completion of said building and the

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equiping thereof as aforesaid, and may construct and complete such building in general accordance with said building loan agreement and plans and specifications as the same may be changed from time to time, and/or may employ a contractor, sub-contractors, architects, superintendent, foremen, mechanics and labor and purchase materials, plant, machinery, fixtures, equipment ~~and furnishings~~ for such work, and may do all other acts and things deemed necessary or proper by the Obligee to complete and equip the said building in accordance with the building loan agreement and plans and specifications and/or may expend any moneys necessary to cause the removal of any municipal violations against the premises or improvements thereon, or to comply with any requirements of the Board of Fire Underwriters having jurisdiction thereof, and/or may pay, bond or otherwise cause the cancellation and discharge of any and all mechanics' and materialmen's liens or other liens, claims of architects, conditional sales contracts, chattel mortgages and charges for work and labor performed or for materials, plant, machinery, fixtures, equipment ~~and furnishings~~ used, installed or entering into the construction of said building, and the Principal and Surety jointly and severally agree to repay to the Obligee on demand any and all sums of money paid by the Obligee for the purposes authorized by this paragraph, with interest at the rate of six per centum per annum from the time or times of any such payment or payments made by the Obligee. If at any time the Obligee shall take over the work of constructing and completing said building, supplying or installing such equipment ~~and furnishings~~, it is under-

stood and agreed that the Obligee does not thereby assume any obligation to complete the said building, and the right of the Obligee to repayment from time to time for moneys expended hereunder, with interest, shall not in any case be affected by any failure on its part to complete the said building, nor shall the Surety be thereby released from its obligation to complete, equip and ~~furnish~~ said building. 1807

FOURTH: In the event that there are at any time any liens, judgments or claims of record of any nature against the premises prior to the expiration of this bond, then, within thirty days after notice in writing from the Obligee, requesting removal of any mechanics' or materialmen's liens or other liens, municipal violations or charges or claims of record of any nature against the premises or any improvements thereon or said equipment ~~or furnishings,~~ the Surety agrees at its own expense to remove the same or cause the same to be removed and cancelled of record, and in default thereof, the Obligee may cause such removal or cancellation of record by payment, bonding or in any other manner, and the Surety shall repay to the Obligee any moneys expended by the Obligee in payment, bonding or cancellation of any such liens or other items mentioned, with any counsel fees, plus interest at the rate of six per centum per annum from the time or times of any such payments by the Obligee. 1808 1809

FIFTH: No changes from said plans and specifications above referred to, including any changes in the design or cubic contents of or the materials

1810 or equipment in said building or in the performance of the work of construction of said building, and no delay, neglect or failure of the Obligee to proceed promptly or otherwise to enforce the completion of said building by the Principal or enforce any remedy it may have against the Principal, and no act done or omission of or action or proceeding taken by the Obligee in case of any default by the Principal, shall in any respect release or relieve the Principal or Surety from their obligations hereunder (which shall also include all such changes). Any waiver or release by the Obligee of any default or omission by the
1811 Principal and/or Surety in complying with said building loan agreement or plans and specifications or with the provisions of this bond, must be in writing and signed by the duly authorized officers of the Obligee in order to be binding upon the Obligee, and any such waiver or release shall apply only to the item or items specifically so released. In the event a conflict at any time exists between the provisions of the building loan agreement and the plans and specifications, the plans and specifications shall control as to any such conflicting item or items.
1812 The Surety hereby waives any and all legal requirements that the Obligee institute action or proceedings at law or in equity against the Principal or exhaust its remedies against the Principal as a condition precedent to action against the Surety, but the Principal shall be made a party to any such suit or action if service can be obtained upon the Principal with reasonable diligence, it being the intention of this instrument that the

Obligee may institute any action or pursue any remedy under this instrument against the Surety immediately after any default by the Principal in constructing, completing, equiping, ~~furnishings,~~ or paying for the said building in accordance with said building loan agreement and plans and specifications. All remedies afforded to the Obligee hereunder are cumulative and shall be construed as not limiting or prejudicing any other legal or equitable remedy which the Obligee may have in the premises. The provisions of this bond shall inure to the benefit of the Obligee, its successors and assigns. 1813

SIXTH: The words "Principal", "Surety" and "Obligee", wherever herein employed, respectively refer to, include and comprehend the plural of Principal, Surety and/or Obligee in any and every case where more than one Principal, Surety and/or Obligee is a party to this bond; and reference to the "successors and assigns" of "Principal", "Surety" and/or "Obligee" shall include and comprehend the successors and assigns of each and every principal, surety and/or obligee party to this bond, and their heirs and personal representatives (if any). The word "its" shall include and comprehend the masculine and/or feminine gender wherever proper. The word "building", wherever herein employed, refers to, includes and comprehends the building and improvements provided to be erected under said building loan agreement and plans and specifications. 1814 1815

It is understood that the word "equipment", as used herein shall not be deemed to include fur-

niture and furnishings and that the Obligor is not obligated to furnish the building.

SEVENTH: The total liability of the Surety under this bond shall not in any event exceed the penalty of this bond.

EIGHTH: All liability under this bond shall cease and terminate four months and one day after the happening of the last to occur of the following three events: (1) the said building shall and have been fully completed, /equipped ~~and furnished~~ as hereinbefore provided for, and the last item of work shall have been performed and of, and materials, /equipment ~~and furnishings~~ installed in accordance with the building loan agreement and plans and specifications, free and clear of all liens, claims of architects, conditional sale contracts, chattel mortgages, encumbrances, violations or claims on account of construction, /equipment ~~or furnishings;~~ (2) the said bond and mortgage shall have been fully advanced by the Obligee to the full principal amount thereof, and the title company employed to issue the mortgage insurance on said premises shall have insured the first lien of said mortgage on the premises therein described in such amount to the Obligee free and clear of all liens, ~~claims of architects,~~ conditional sale contracts, chattel mortgages, encumbrances, ~~violations~~ or claims or charges on account of the or construction, /equipment ~~or furnishing~~ of said building.

IN WITNESS WHEREOF, the said Principal and the 1819
said Sureties have caused this instrument to be
signed and executed by their proper officers there-
unto duly authorized, on the day, month and year
first above written.

CENTRAL PARK PROPERTIES, INC.,
By: A. E. LEFCOURT
President.

ATTEST:

LOUIS HAAS
Secretary.

FIDELITY AND DEPOSIT COMPANY 1820
OF MARYLAND,
[SEAL]
By: H. R. C. Hickey
Attorney-in-Fact.

ATTEST:

W. J. MESKILL
Attorney-in-Fact.

AMERICAN BONDING COMPANY OF
BALTIMORE,
[SEAL]
By: H. R. C. Hickey
Attorney-in-Fact. 1821

ATTEST:

W. J. MESKILL
Attorney-in-Fact.

Surety Bond

1822 STATE OF NEW YORK
COUNTY OF ~~KINGS~~ NEW YORK } ss.:

On this 25th day of September, in the year one thousand nine hundred and twenty-nine, before me personally came ABRAHAM E. LEFCOURT, to me known, who, being by me duly sworn, did depose and say that he resides in Borough of Manhattan, New York City,; that he is the President of CENTRAL PARK PROPERTIES, INC., the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of said corporation; that the seal affixed to said in-
1823 strument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

ALEXANDER JOHNSTON
ALEXANDER JOHNSTON
Notary Public, Kings County
Kings Co. Clerk's No. 83, Reg. No. 198
N. Y. Co. Clerk's No. 252; Reg. No. 0-170
Bronx Co. Clerk's No. 17; Reg. No. 3045
Queens Co. Clerk's No. 1517; Reg. No. 4341
Commission expires March 30, 1930

1824 Form NY2171—2500, 8-27-29 34074

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

On the 25th day of September, in the year 1929, before me personally came W. J. Meskill to me known, who, being by me duly sworn, did depose and say that he resides in the City of New York; that he is the Attorney-in-Fact of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, the corpora-

tion described in, and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order; and that the FIDELITY AND DEPOSIT COMPANY OF MARYLAND has been duly authorized to transact business in the State of New York, in pursuance of the statutes in such case made and provided; and that the liabilities of said Company do not exceed its assets as ascertained in the manner provided in Section 183, of the Insurance Law, constituting Chapter 33 of the Consolidated Laws of the State of New York. And the said W. J. Meskill further said that he is acquainted with H. R. C. Hickey and knew him to be the Attorney-in-Fact of said Company; that the signature of the said H. R. C. Hickey subscribed to the within instrument, was in the genuine handwriting of the said H. R. C. Hickey and was subscribed thereto by like order of the Board of Directors, and in the presence of him, the said W. J. Meskill

CHAS E MCCARTHY
Notary Public, N. Y. Co. No. 115, Reg. No. 1Mc-147
Certificate filed in Kings Co. No. 19, Reg. No. 1086
[SEAL] Bronx Co. 14, Reg. 3140, Queens 717, Reg. 7160
Nassau, Richmond and Westchester Cos.
Term Expires March 30, 1931

At a regular meeting of the Executive Committee of the Board of Directors of the FIDELITY AND

DEPOSIT COMPANY OF MARYLAND, held in its office in the City of Baltimore, State of Maryland, on the 22nd day of August, 1929, the following resolution was unanimously adopted:

"*Resolved,* That John A. Griffin, Wallace P. Harvey, W. J. Meskill, Robert J. Burns, Arthur H. Poole, William A. Bullock, F. Morris Miller, Frances A. Massey, H. R. C. Hickey, Herbert J. McCooey, Louis C. Field, Clarence J. Collins, N. F. Penny, Charles M. Clark, Grace Sirrine, Anna Saeger, John E. M. Salley, Perry C. Symonds, Andrew G. Schneider, Frank A. Eickhoff, Thomas P. Cummings, Joseph P. Drake, Raymond C. Laib, Madeline H. Carey, William A. Cable, Harold W. Steuer, Joseph R. Franz, Caroline Johnson and Adele D. Klauser, all of the City of New York, State of New York, be and each of them is hereby appointed Attorney-in-Fact of this Company and empowered to execute and deliver and attach the seal of the Company to any and all bonds or undertakings for or on behalf of this Company and any and all reinsurance agreements covering bonds or undertakings. Such bonds or undertakings or reinsurance agreements to be executed for the Company by any one of the Attorneys-in-Fact aforesaid, and to be attested in every instance by one other of the said Attorneys-in-Fact, as occasion may require; it being understood, however, that one of the Attorneys-in-Fact signing shall be either said John A. Griffin, Wallace P. Harvey, W. J. Meskill, Robert J. Burns, Arthur H. Poole, William A. Bullock, F. Morris Miller, Frances A. Massey, William A. Cable, Joseph R. Franz, H. R. C. Hickey, Herbert J. McCooey, Louis C. Field, Clarence J. Collins, or N. F. Penny.

Surety Bond

"This Resolution revokes that of August 1st, 1929, in behalf of Wallace P. Harvey, *et al.*"

I, W. J. Meskill Attorney-in-Fact of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, have compared the foregoing Resolution with the original thereof, as recorded in the Minute Book of said Company and DO HEREBY CERTIFY that the same is a true and correct transcript therefrom, and of the whole of said original Resolution, and that the authority granted to the individuals specified in said resolution of August 22, 1929, is in full force and unrevoked as of this date. Given under my hand and the seal of the Company, at the City of New York, this 25th day of September, 1929.

W. J. MESKILL

[SEAL] W. J. Meskill

FIDELITY AND DEPOSIT COMPANY OF MARYLAND
FINANCIAL STATEMENT, JUNE 30, 1929

ASSETS

Real Estate	$2,340,000.00
Bonds and Stocks (Market valuations)	21,985,126.08
Mortgage Loans	140,660.71
Cash in Banks and Offices	1,684,074.57
Agents' Debit Balances (Subsequent to April 1, 1929)	2,541,553.85
Agents' Debit Balances (Prior to April 1, 1929)	507,432.20
Reinsurance Salvage Due	155,062.25
Accounts Receivable	118,414.58
TOTAL ASSETS	$29,472,324.24

Surety Bond

1834	Agents' Debit Balances (Prior to April 1, 1929) Deducted according to rulings and regulations of various Insurance Departments	507,432.20
	TOTAL ASSETS (on basis of statement to Insurance Departments)	$28,964,892.04
	LIABILITIES	
	Reserve for Unearned Premiums	$7,749,121.38
	Reserve for Claims	6,103,693.41
	Reserve for Taxes and Expenses	1,504,038.94
1835	Reserve for Commissions	471,849.96
	Reserves, Miscellaneous	299,495.32
	Reserve for Advance Premiums and Return Premiums	161,621.42
	Reinsurance Due Other Companies	492,532.55
	TOTAL RESERVES	$16,782,352.98
	Capital Stock, Paid Up $5,000,000.00	
	Surplus and undivided Profits $7,689,971.26	
	Less Agents' Debit Balances (Prior to April 1, 1929) Deducted according to Insurance Department Regulations. (See Above) 507,432.20	
1836	Surplus and Undivided Profits (on basis of statement to Insurance Depts.) 7,182,539.06	
	Surplus to Policy-holders	12,182,539.06
		$28,964,892.04

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.: 1837

W. J. Meskill being duly sworn, says that he is the Attorney-in-Fact of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, that the foregoing is a true and correct statement of the financial condition of the said Company, as of June 30, 1929, to the best of his knowledge and belief, and that the financial condition of said Company is as favorable now as it was when such statement was made.

W. J. MESKILL
W. J. Meskill 1838

Subscribed and sworn to before me }
this 25th day of September 1929 }

CHAS E McCARTHY
Notary Public, N. Y. Co. No. 113, Reg. No. 1Mc-147
Certificate filed Kings Co. No. 19, Reg. No. 1086
[SEAL] Bronx Co. 14, Reg. 3140, Queens 717, Reg. 7160
Nassau, Richmond and Westchester Cos.
Term Expires March 30, 1931

1839

Form NY2171—500, 8-27-29 2298

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

On the 25th day of September, in the year 1929, before me personally came W. J. Meskill to me known, who, being by me duly sworn, did depose and say that he resides in the City of New York; that he is the Attorney-in-Fact of the AMERICAN

1840 BONDING COMPANY OF BALTIMORE, the corporation described in, and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order; and that the AMERICAN BONDING COMPANY OF BALTIMORE has been duly authorized to transact business in the State of New York, in pursuance of the statutes in such case made and provided; and that the liabilities of said Company do not exceed its assets as ascertained in the manner provided in
1841 Section 183, of the Insurance Law, constituting Chapter 33 of the Consolidated Laws of the State of New York. And the said W. J. Meskill further said that he is acquainted with H. R. C. Hickey and knew him to be the Attorney-in-Fact of said Company; that the signature of the said H. R. C. Hickey subscribed to the within instrument, was in the genuine handwriting of the said H. R. C. Hickey and was subscribed thereto by like order of the Board of Directors, and in the presence of him, the said W. J. Meskill

CHAS E MCCARTHY

1842 Notary Public, N. Y. Co. No. 113, Reg. No. 1Mc-147

Certificate filed Kings Co. No. 19, Reg. 1086

[SEAL] Bronx Co. 14, Reg. 3140, Queens 717, Reg. 7160

Nassau, Richmond and Westchester Cos.

Term Expires March 30, 1931

At a regular meeting of the Board of Directors of the AMERICAN BONDING COMPANY OF BALTIMORE,

held in its office in the City of Baltimore, State of Maryland, on the 22nd day of August, 1929, the following resolution was unanimously adopted:

"*Resolved*, That John A. Griffin, Wallace P. Harvey, W. J. Meskill, Robert J. Burns, Arthur H. Poole, William A. Bullock, F. Morris Miller, Frances A. Massey, H. R. C. Hickey, Herbert J. McCooey, Louis C. Field, Clarence J. Collins, N. F. Penny, Charles M. Clark, Grace Sirrine, Anna Saeger, John E. M. Salley, Perry C. Symonds, Andrew G. Schneider, Frank A. Eickhoff, Thomas P. Cummings, Joseph P. Drake, Raymond C. Laib, Madeline H. Carey, William A. Cable, Harold W. Steuer, Joseph R. Franz, Caroline Johnson and Adele D. Klauser, all of the City of New York, State of New York, be and each of them is hereby appointed Attorney-in-Fact of this Company and empowered to execute and deliver and attach the seal of the Company to any and all bonds or undertakings for or on behalf of this Company and any and all reinsurance agreements covering bonds or undertakings. Such bonds or undertakings or reinsurance agreements to be executed for the Company by any one of the Attorneys-in-Fact aforesaid and to be attested in every instance by one other of the said Attorneys-in-Fact, as occasion may require; it being understood, however, that one of the Attorneys-in-Fact signing shall be either said John A. Griffin, Wallace P. Harvey, W. J. Meskill, Robert J. Burns, Arthur H. Poole, William A. Bullock, F. Morris Miller, Frances A. Massey, William A. Cable, Joseph R. Franz, H. R. C. Hickey, Herbert J. McCooey, Louis C. Field, Clarence J. Collins, or N. F. Penny.

1846 "This Resolution revokes that of August 1st, 1929, in behalf of Wallace P. Harvey, *et al.*"

I, W. J. Meskill Attorney-In-Fact of the AMERICAN BONDING COMPANY OF BALTIMORE, have compared the foregoing Resolution with the original thereof, as recorded in the Minute Book of said Company and DO HEREBY CERTIFY that the same is a true and correct transcript therefrom, and of the whole of said original Resolution, and that the authority granted to the individuals specified in said resolution of August 22, 1929, is in full force and unrevoked as of this date. Given under my
1847 hand and the seal of the Company, at the City of New York, this 2th day of September, 1929.

W. J. MESKILL
W. J. Meskill

[SEAL]

AMERICAN BONDING COMPANY OF BALTIMORE
FINANCIAL STATEMENT, JUNE 30, 1929

ASSETS

	Cash	$140,737.34
1848	Bonds and Stocks (Market valuations)	1,370,151.41
	Real Estate	59,250.00
	Agents' Debit Balances (subsequent to April 1, 1929)	122,216.73
	Agents' Debit Balances (prior to April 1, 1929)	24,769.90
	Reinsurance Commissions Due, etc.	59,938.45
	Interest Accrued	321.63
	TOTAL ASSETS	$1,777,385.46

Agents' Debit Balances (prior to April 1, 1929) deducted according to rulings and regulations of various Insurance Departments		24,769.90	1849
TOTAL ASSETS (on basis of statement to Insurance Departments)		$1,752,615.56	
LIABILITIES			
Reserve for Taxes		$29,293.71	
Reinsurance due other Companies		176,958.59	
Reserve for Advanced Premiums and Returned Premiums		5,359.09	1850
Reserve for Commissions		29,214.42	
TOTAL RESERVES		$240,825.81	
Capital Stock, Paid Up	$1,000,000.00		
Surplus and Undivided Profits	$536,559.65		
Less Agents' Debit Balances (prior to April 1, 1929) deducted according to Insurance Department regulations (See Above)	24,769.90		1851
Surplus and Undivided Profits (on basis of statement to Insurance Depts.)	511,789.75		
Surplus to Policy-holders		$1,511,789.75	
		$1,752,615.56	

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } SS.:

W. J. Meskill being duly sworn, says that he is the Attorney-in-Fact of the AMERICAN BONDING

1852 COMPANY OF BALTIMORE, that the foregoing is a true and correct statement of the financial condition of the said Company, as of June 30, 1929, to the best of his knowledge and belief, and that the financial condition of said Company is as favorable now as it was when such statement was made.

W. J. MESKILL
W. J. Meskill

Subscribed and sworn to before me, this 25th day of September, 1929.

CHAS E McCARTHY
1853 Notary Public, N. Y. Co. No. 113, Reg. No. 1Mc-147
Certificate filed Kings Co. No. 19, Reg. No. 1086
[SEAL] Bronx Co. 14, Reg. 3140, Queens 717, Reg. 7160
Nassau, Richmond and Westchester Cos.
Term Expires March 30, 1931

(Endorsement on back of Surety Bond.)

CENTRAL PARK PROPERTIES, INC.,
1854 FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
AMERICAN BONDING COMPANY OF BALTIMORE,
to
THE PRUDENCE COMPANY, INC.,

SURETY BOND

Plaintiff's Exhibit 3, consisting of 8 checks for the first advance under the Building Loan Agreement, aggregating $3,250,000, is omitted pursuant 1855
to stipulation and order (*supra*, p. 565), subject to the right of either party to submit the original checks to the Court if so advised.

Plaintiff's Exhibit 4.

(Specifications—Extracts.)

The remainder of Exhibit 4, which is a volume approximately three inches thick covering about 32 trades, has been omitted from the printed record pursuant to stipulation and order (*supra*, 1856
p. 565), subject to the right of either party to submit the original thereof to the Court.

ADDENDA No. 8.

TO

PLAIN PAINTING

OF

SPECIFICATION

FOR

160-170 WEST 59TH STREET BUILDING
SYNDICATE SUBSCRIPTION CORPORATION
OWNERS.

1857

July 12th, 1929.
H. R. S.

FRANK GRAD, Architect
521 FIFTH AVENUE,
NEW YORK CITY

NOTICE TO BIDDERS:

Please take account of the following in preparing estimates for the above building.

1. There shall be included in the work of this Contract, the furnishing of all labor and material required for the painting of all exterior metal work and wood work, including all doors, win-

1858 dows, frames, etc., all louvres, screens, frames, etc., and all exterior metal work except bronze and copper kalamein work, or shop fronts.

2. All of the above mentioned work shall receive two coats of lead and oil paint of color as selected by the Architect.

Form A2 General Conditions. Fourth Edition

The General Conditions of the Contract for the Construction of Buildings

Standard Form of The American Institute of Architects

1859 These General Conditions have received the approval of the National Association of Builders' Exchanges, the Associated General Contractors of America, the Joint Conference on Construction Contracts, the National Association of Master Plumbers, the National Association of Sheet Metal Contractors of the United States, the National Electrical Contractors' Association of the United States, the National Association of Marble Dealers, the Building Granite Quarries Association, and the Building Trades Employers' Association of the City of New York.

1860 Fourth Edition, Copyright 1915-1918-1925 by The American Institute of Architects, The Octagon, Washington, D. C.

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ART. 1. DEFINITIONS.

(a) The Contract Documents consist of the Agreement, the General Conditions of the Contract, the Drawings and Specifications, including all modifications thereof incorporated in the documents before their execution. These form the Contract.

(b) The Owner, the Contractor and the Architect are those mentioned as such in the
1865 Agreement. They are treated throughout the Contract Documents as if each were of the singular number and masculine gender.

(c) The term Subcontractor, as employed herein, includes only those having a direct contract with the Contractor and it includes one who furnishes material worked to a special design according to the plans or specifications of this work, but does not include one who merely furnishes material not so worked.

(d) Written notice shall be deemed to have been
1866 duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered mail to the last business address known to him who gives the notice.

(e) The term "work" of the Contractor or Subcontractor includes labor or materials or both.

(f) All time limits stated in the Contract Documents are of the essence of the Contract.

(g) The law of the place of building shall govern the construction of this Contract. 1867

ART. 2. EXECUTION, CORRELATION AND INTENT OF DOCUMENTS.—The Contract Documents shall be signed in duplicate by the Owner and the Contractor. In case the Owner and the Contractor fail to sign the General Conditions, Drawings or Specifications, the Architect shall identify them.

The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the documents is to include all labor and materials, equipment and transportation necessary for the proper execution of the work. It is not intended, however, that materials or work not covered by or properly inferable from any heading, branch, class or trade of the specifications shall be supplied unless distinctly so noted on the drawings. Materials or work described in words which so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards. 1868

ART. 3. DETAIL DRAWINGS AND INSTRUCTIONS.—The Architect shall furnish with reasonable promptness, additional instructions, by means of drawings or otherwise, necessary for the proper execution of the work. All such drawings and instructions shall be consistent with the Contract Documents, true developments thereof, and reasonably inferable therefrom. 1869

The work shall be executed in conformity therewith and the Contractor shall do no work without proper drawings and instructions.

The Contractor and the Architect, if either so requests, shall jointly prepare a schedule, subject

1870 to change from time to time in accordance with the progress of the work, fixing the dates at which the various detail drawings will be required, and the Architect shall furnish them in accordance with that schedule. Under like conditions, a schedule shall be prepared, fixing the dates for the submission of shop drawings, for the beginning of manufacture and installation of materials and for the completion of the various parts of the work.

ART. 4. COPIES FURNISHED.—Unless otherwise provided in the Contract Documents the Architect will furnish to the Contractor, free of charge, all
1871 copies of drawings and specifications reasonably necessary for the execution of the work.

ART. 5. SHOP DRAWINGS.—The Contractor shall submit with such promptness as to cause no delay in his own work or in that of any other Contractor, two copies of all shop or setting drawings and schedules required for the work of the various trades, and the Architect shall pass upon them with reasonable promptness. The Contractor shall make any corrections required by the Architect, file with him two corrected copies and furnish such other copies as may be needed. The Architect's
1872 approval of such drawings or schedules shall not relieve the Contractor from responsibility for deviations from drawings or specifications, unless he has in writing called the Architect's attention to such deviations at the time of submission, nor shall it relieve him from responsibility for errors of any sort in shop drawings or schedules.

ART. 6. DRAWINGS AND SPECIFICATIONS ON THE WORK.—The Contractor shall keep one copy of all drawings and specifications on the work, in good

order, available to the Architect and to his representatives. 1873

ART. 7. OWNERSHIP OF DRAWINGS AND MODELS.—All drawings, specifications and copies thereof furnished by the Architect are his property. They are not to be used on other work and, with the exception of the signed Contract set, are to be returned to him on request, at the completion of the work. All models are the property of the Owner.

ART. 8. SAMPLES.—The Contractor shall furnish for approval all samples as directed. The work shall be in accordance with approved samples. 1874

ART. 9. MATERIALS, APPLIANCES, EMPLOYES.—Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the execution and completion of the work.

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

The Contractor shall at all times enforce strict discipline and good order among his employes, and shall not employ on the work any unfit person or any one not skilled in the work assigned to him. 1875

ART. 10. ROYALTIES AND PATENTS.—The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the

1876 Owner shall be responsible for all such loss when a particular process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has information that the process or article specified is an infringement of a patent he shall be responsible for such loss unless he promptly gives such information to the Architect or Owner.

ART. 11. SURVEYS, PERMITS AND REGULATIONS.—The Owner shall furnish all surveys unless otherwise specified. Permits and licenses of a temporary nature necessary for the prosecution of the
1877 work shall be secured and paid for by the Contractor. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner, unless otherwise specified.

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the Architect in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in
1878 the work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Architect, he shall bear all costs arising therefrom.

ART. 12. PROTECTION OF WORK AND PROPERTY.—The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the Owner's property from injury or loss arising in connection with this Contract. He

shall make good any such damage, injury or loss, 1879
except such as may be directly due to errors in the Contract Documents or caused by agents or employes of the Owner. He shall adequately protect adjacent property as provided by law and the Contract Documents. He shall provide and maintain all passage ways, guard fences, lights and other facilities for protection required by public authority or local conditions.

In an emergency affecting the safety of life or of the work or of adjoining property, the Contractor, without special instruction or authorization from the Architect or Owner, is hereby permitted to act, at his discretion, to prevent such 1880
threatened loss or injury, and he shall so act, without appeal, if so instructed or authorized. Any compensation, claimed by the Contractor on account of emergency work, shall be determined by agreement or Arbitration.

ART. 13. INSPECTION OF WORK.—The Architect and his representatives shall at all times have access to the work wherever it is in preparation or progress and the Contractor shall provide proper facilities for such access and for inspection.

If the specifications, the Architect's instructions, laws, ordinances or any public authority 1881
require any work to be specially tested or approved, the Contractor shall give the Architect timely notice of its readiness for inspection, and if the inspection is by another authority than the Architect, of the date fixed for such inspection. Inspections by the Architect shall be promptly made, and where practicable at the source of supply. If any work should be covered up without approval or consent of the Architect, it must, if

1882 required by the Architect, be uncovered for examination at the Contractor's expense.

Re-examination of questioned work may be ordered by the Architect and if so ordered the work must be uncovered by the Contractor. If such work be found in accordance with the Contract Documents the Owner shall pay the cost of re-examination and replacement. If such work be found not in accordance with the Contract Documents the Contractor shall pay such cost, unless he shall show that the defect in the work was caused by another Contractor, and in that event the Owner shall pay such cost.

1883 ART. 14.—SUPERINTENDENCE: SUPERVISION.—The Contractor shall keep on his work, during its progress, a competent superintendent and any necessary assistants, all satisfactory to the Architect. The superintendent shall not be changed except with the consent of the Architect, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. The superintendent shall represent the Contractor in his absence and all directions given to him shall be as binding as if given to the Contractor. Important directions shall be confirmed in writing to
1884 the Contractor. Other directions shall be so confirmed on written request in each case.

The Contractor shall give efficient supervision to the work, using his best skill and attention. He shall carefully study and compare all drawings, specifications and other instructions and shall at once report to the Architect any error, inconsistency or omission which he may discover, but he shall not be held responsible for their existence or discovery.

ART. 15.—CHANGES IN THE WORK.—The Owner, 1885
without invalidating the Contract, may order extra work or make changes by altering, adding to or deducting from the work, the Contract Sum being adjusted accordingly. All such work shall be executed under the conditions of the original contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

In giving instructions, the Architect shall have authority to make minor changes in the work, not involving extra cost, and not inconsistent with the purposes of the building, but otherwise, except in an emergency endangering life or property, no 1886
extra work or change shall be made unless in pursuance of a written order from the Owner signed or countersigned by the Architect, or a written order from the Architect stating that the Owner has authorized the extra work or change, and no claim for an addition to the contract sum shall be valid unless so ordered.

The value of any such extra work or change shall be determined in one or more of the following ways:

(a) By estimate and acceptance in a lump sum.

(b) By unit prices named in the contract or 1887
subsequently agreed upon.

(c) By cost and percentage or by cost and a fixed fee.

If none of the above methods is agreed upon, the Contractor, provided he receives an order as above, shall proceed with the work. In such case and also under case (c), he shall keep and present in such form as the Architect may direct, a cor-

1888 rect account of the net cost of labor and materials, together with vouchers. In any case, the Architect shall certify to the amount, including reasonable allowance for overhead and profit, due to the Contractor. Pending final determination of value, payments on account of changes shall be made on the Architect's certificate.

ART. 16.—CLAIMS FOR EXTRA COST.—If the Contractor claims that any instructions by drawings or otherwise involve extra cost under this contract, he shall give the Architect written notice thereof within a reasonable time after the receipt
1889 of such instructions, and in any event before proceeding to execute the work, except in emergency endangering life or property, and the procedure shall then be as provided for changes in the work. No such claim shall be valid unless so made.

ART. 17. DEDUCTIONS FOR UNCORRECTED WORK.—If the Architect and Owner deem it inexpedient to correct work injured or done not in accordance with the Contract, an equitable deduction from the contract price shall be made therefor.

ART. 18. DELAYS AND EXTENSION OF TIME.—If the Contractor be delayed at any time in the progress
1890 of the work by any act or neglect of the Owner or the Architect, or of any employe of either, or by any other Contractor employed by the Owner, or by changes ordered in the work, or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the Architect pending arbitration, or by any cause which the Architect shall decide to justify the delay, then the time of completion shall be ex-

tended for such reasonable time as the Architect may decide. 1891

No such extension shall be made for delay occurring more than seven days before claim therefor is made in writing to the Architect. In the case of a continuing cause of delay, only one claim is necessary.

If no schedule or agreement stating the dates upon which drawings shall be furnished is made, then no claim for delay shall be allowed on account of failure to furnish drawings until two weeks after demand for such drawings and not then unless such claim be reasonable.

This article does not exclude the recovery of damages for delay by either party under other provisions in the contract documents. 1892

ART. 19. CORRECTION OF WORK BEFORE FINAL PAYMENT.—The Contractor shall promptly remove from the premises all materials condemned by the Architect as failing to conform to the Contract, whether incorporated in the work or not, and the Contractor shall promptly replace and re-execute his own work in accordance with the Contract and without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement. 1893

If the Contractor does not remove such condemned work and materials within a reasonable time, fixed by written notice, the Owner may remove them and may store the material at the expense of the Contractor. If the Contractor does not pay the expenses of such removal within ten days' time thereafter, the Owner may, upon ten days' written notice, sell such materials at auction

1894 or at private sale and shall account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor.

ART. 20. CORRECTION OF WORK AFTER FINAL PAYMENT.—Neither the final certificate nor payment nor any provision in the Contract Documents shall relieve the Contractor of responsibility for faulty materials or workmanship and, unless otherwise specified, he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of
1895 one year from the date of substantial completion. The Owner shall give notice of observed defects with reasonable promptness. All questions arising under this article shall be decided by the Architect subject to arbitration.

ART. 21. THE OWNER'S RIGHT TO DO WORK.—If the Contractor should neglect to prosecute the work properly or fail to perform any provision of this contract, the Owner, after three days' written notice to the Contractor may, without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor,
1896 provided, however, that the Architect shall approve both such action and the amount charged to the Contractor.

ART. 22. OWNER'S RIGHT TO TERMINATE CONTRACT.—If the Contractor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should persistently or repeatedly refuse or should fail, except in cases for which extension

of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, ordinances or the instructions of the Architect, or otherwise be guilty of a substantial violation of any provision of the contract, then the Owner, upon the certificate of the Architect that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving the Contractor seven days' written notice, terminate the employment of the Contractor and take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price shall exceed the expense of finishing the work including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expense incurred by the Owner as herein provided, and the damage incurred through the Contractor's default, shall be certified by the Architect.

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ART. 23. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT.—If the work should be stopped under an order of any court, or other public authority, for a period of three months, through no act or fault of the Contractor or of anyone employed by him, or if the Architect should fail to issue any certificate for payment within

1900 seven days after it is due, or if the Owner should fail to pay to the Contractor within seven days of its maturity and presentation, any sum certified by the Architect or awarded by arbitrators, then the Contractor may, upon seven days' written notice to the Owner and the Architect, stop work or terminate this contract and recover from the Owner payment for all work executed and any loss sustained upon any plant or materials and reasonable profit and damages.

ART. 24. APPLICATIONS FOR PAYMENTS.—The Contractor shall submit to the Architect an application for each payment, and, if required, receipts
1901 or other vouchers, showing his payments for materials and labor, including payments to subcontractors as required by Art. 37.

If payments are made on valuation of work done, such application shall be submitted at least ten days before each payment falls due, and, if required, the Contractor shall, before the first application, submit to the Architect a schedule of values of the various parts of the work, including quantities, aggregating the total sum of the contract, divided so as to facilitate payments to subcontractors in accordance with Article 37 (e),
1902 made out in such form as the Architect and the Contractor may agree upon, and, if required, supported by such evidence as to its correctness as the Architect may direct. This schedule, when approved by the Architect, shall be used as a basis for certificates of payment, unless it be found to be in error. In applying for payments, the Contractor shall submit a statement based upon this schedule, and, if required, itemized in such form and supported by such evidence as the Architect

may direct, showing his right to the payment claimed. 1903

If payments are made on account of materials delivered and suitably stored at the site but not incorporated in the work, they shall, if required by the Architect, be conditional upon submission by the Contractor of bills of sale or such other procedure as will establish the Owner's title to such material or otherwise adequately protect the Owner's interest.

ART. 25. CERTIFICATES OF PAYMENTS.—If the Contractor has made application as above, the Architect shall, not later than the date when each payment falls due, issue to the Contractor a certificate for such amount as he decides to be properly due. 1904

No certificate issued nor payment made to the Contractor, nor partial or entire use or occupancy of the work by the Owner, shall be an acceptance of any work or materials not in accordance with this contract. The making and acceptance of the final payment shall constitute a waiver of all claims by the Owner, other than those arising from unsettled liens, from faulty work appearing after final payment or from requirement of the specifications, and of all claims by the Contractor, except those previously made and still unsettled. 1905

Should the Owner fail to pay the sum named in any certificate of the Architect or in any award by arbitration, upon demand when due, the Contractor shall receive, in addition to the sum named in the certificate, interest thereon at the legal rate in force at the place of building.

ART. 26. PAYMENTS WITHHELD.—The Architect may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of

1906 any certificate to such extent as may be necessary to protect the Owner from loss on account of:

(a) Defective work not remedied.

(b) Claims filed or reasonable evidence indicating probable filing of claims.

(c) Failure of the Contractor to make payments properly to subcontractors or for material or labor.

(d) A reasonable doubt that the contract can be completed for the balance then unpaid.

1907 (e) Damage to another Contractor.

When the above grounds are removed payment shall be made for amounts withheld because of them.

ART. 27. CONTRACTOR'S LIABILITY INSURANCE.—The Contractor shall maintain such insurance as will protect him from claims under workmen's compensation acts and from any other claims for damages for personal injury, including death, which may arise from operations under this Contract, whether such operations be by himself or by any subcontractor or anyone directly or indi-
1908 rectly employed by either of them. Certificates of such insurance shall be filed with the Owner, if he so require, and shall be subject to his approval for adequacy of protection.

ART. 28. OWNER'S LIABILITY INSURANCE.—The Owner shall be responsible for and at his option may maintain such insurance as will protect him from his contingent liability for damages for personal injury, including death, which may arise from operations under this contract.

ART. 29. FIRE INSURANCE.—The Owner shall effect 1909
and maintain fire insurance upon the entire structure on which the work of this contract is to be done and upon all materials, in or adjacent thereto and intended for use thereon, to at least eighty per cent of the insurable value thereof. The loss, if any, is to be made adjustable with and payable to the Owner as Trustee for whom it may concern.

All policies shall be open to inspection by the Contractor. If the Owner fails to show them on request, or if he fails to effect or maintain insurance as above, the Contractor may insure his own interest and charge the cost thereof to the Owner. If the Contractor is damaged by failure of the 1910
Owner to maintain such insurance, he may recover as stipulated in the contract for recovery of damages.

If required in writing by any party in interest, the Owner as Trustee shall, upon the occurrence of loss, give bond for the proper performance of his duties. He shall deposit any money received from insurance in an account separate from all his other funds and he shall distribute it in accordance with such agreement as the parties in interest may reach, or under an award of arbitrators appointed, one by the Owner, another by joint 1911
action of the other parties in interest, all other procedure being as provided elsewhere in the contract for Arbitration. If after loss no special agreement is made, replacement of injured work shall be ordered and executed as provided for changes in the work.

The Trustee shall have power to adjust and settle any loss with the insurers unless one of the Contractors interested shall object in writing within three working days of the occurrence of

1912 loss, and thereupon arbitrators shall be chosen as above. The Trustees shall in that case make settlement with the insurers in accordance with the directions of such arbitrators, who shall also, if distribution by arbitration is required, direct such distribution.

ART. 30. GUARANTY BONDS.—The Owner shall have the right, prior to the signing of the Contract, to require the Contractor to furnish bond covering the faithful performance of the Contract and the payment of all obligations arising thereunder, in such form as the Owner may prescribe
1913 and with such sureties as he may approve. If such bond is required by instructions given previous to the submission of bids, the premium shall be paid by the Contractor; if subsequent thereto, it shall be paid by the Owner.

ART. 31. DAMAGES.—If either party to this Contract should suffer damage in any manner because of any wrongful act or neglect of the other party or of anyone employed by him, then he shall be reimbursed by the other party for such damage.

Claims under this clause shall be made in writing to the party liable within a reasonable time
1914 at the first observance of such damage and not later than the time of final payment, except as expressly stipulated otherwise in the case of faulty work or materials, and shall be adjusted by agreement or arbitration.

ART. 32. LIENS.—Neither the final payment nor any part of the retained percentage shall become due until the Contractor, if required, shall deliver to the Owner a complete release of all liens arising out of this Contract, or receipts in full in lieu

thereof and, if required in either case, an affidavit 1915
that so far as he has knowledge or information the releases and receipts include all the labor and material for which a lien could be filed; but the Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Owner, to indemnify him against any lien. If any lien remain unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

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ART. 33. ASSIGNMENT.—Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the Owner.

ART. 34. MUTUAL RESPONSIBILITY OF CONTRACTORS.—Should the Contractor cause damage to any other contractor on the work the Contractor agrees, upon due notice, to settle with such contractor by agreement or arbitration, if he will so settle. If such other contractor sues the Owner on 1917
account of any damage alleged to have been so sustained, the Owner shall notify the Contractor, who shall defend such proceedings at the Owner's expense and, if any judgment against the Owner arise therefrom, the Contractor shall pay or satisfy it and pay all costs incurred by the Owner.

ART. 35. SEPARATE CONTRACTS.—The Owner reserves the right to let other contracts in connection with this work. The Contractor shall afford other contractors reasonable opportunity for the

1918 introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs.

If any part of the Contractor's work depends for proper execution or results upon the work of any other contractor, the Contractor shall inspect and promptly report to the Architect any defects in such work that render it unsuitable for such proper execution and results. His failure so to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of his work, except as to defects which may develop in the other contractor's work
1919 after the execution of his work.

To insure the proper execution of his subsequent work the Contractor shall measure work already in place and shall at once report to the Architect any discrepancy between the executed work and the drawings.

ART. 36.—SUBCONTRACTS.—The Contractor shall, as soon as practicable after the signature of the contract, notify the Architect in writing of the names of subcontractors proposed for the principal parts of the work and for such others as the Architect may direct and shall not employ any
1920 that the Architect may within a reasonable time object to as incompetent or unfit.

If the Contractor has submitted before signing the contract a list of subcontractors and the change of any name on such list is required in writing by the Owner after signature of agreement, the contract price shall be increased or diminished by the difference in cost occasioned by such change.

The Architect shall, on request, furnish to any subcontractor, wherever practicable, evidence of the amounts certified on his account.

The Contractor agrees that he is as fully responsible to the Owner for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him. 1921

Nothing contained in the contract documents shall create any contractual relation between any subcontractor and the Owner.

ART. 37. RELATIONS OF CONTRACTOR AND SUBCONTRACTOR.—The Contractor agrees to bind every Subcontractor and every Subcontractor agrees to be bound by the terms of the Agreement, the General Conditions, the Drawings and Specifications as far as applicable to his work, including the following provisions of this article, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the Owner or Architect. 1922

This does not apply to minor subcontracts.

The Subcontractor agrees—

(a) To be bound to the Contractor by the terms of the Agreement, General Conditions, Drawings and Specifications, and to assume toward him all the obligations and responsibilities that he, by those documents, assumes toward the Owner. 1923

(b) To submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment under Article 24 of the General Conditions.

(c) To make all claims for extras, for extensions of time and for damages for delays or otherwise, to the Contractor in the manner provided in the General Conditions for like claims by the

1924 Contractor upon the Owner, except that the time for making claims for extra cost is one week.

The Contractor agrees—

(d) To be bound to the Subcontractor by all the obligations that the Owner assumes to the Contractor under the Agreement, General Conditions, Drawings and Specifications, and by all the provisions thereof affording remedies and redress to the Contractor from the Owner.

(e) To pay the Subcontractor, upon the issuance of certificates, if issued under the schedule of values described in Article 24 of the General
1925 Conditions, the amount allowed to the Contractor on account of the Subcontractor's work to the extent of the Subcontractor's interest therein.

(f) To pay the Subcontractor, upon the issuance of certificates, if issued otherwise than as in (e), so that at all times his total payments shall be as large in proportion to the value of the work done by him as the total amount certified to the Contractor is to the value of the work done by him.

(g) To pay the Subcontractor to such extent as may be provided by the Contract Documents
1926 or the subcontract, if either of these provides for earlier or larger payments than the above.

(h) To pay the Subcontractor on demand for his work or materials as far as executed and fixed in place, less the retained percentage, at the time the certificate should issue, even though the Architect fails to issue it for any cause not the fault of the Subcontractor.

(j) To pay the Subcontractor a just share of any fire insurance money received by him, the Contractor, under Article 29 of the General Conditions. 1927

(k) To make no demand for liquidated damages or penalty for delay in any sum in excess of such amount as may be specifically named in the subcontract.

(l) That no claim for services rendered or materials furnished by the Contractor to the Subcontractor shall be valid unless written notice thereof is given by the Contractor to the Subcontractor during the first ten days of the calendar month following that in which the claim originated. 1928

(m) To give the Subcontractor an opportunity to be present and to submit evidence in any arbitration involving his rights.

(n) To name as arbitrator under arbitration proceedings as provided in the General Conditions the person nominated by the Subcontractor, if the sole cause of dispute is the work, materials, rights or responsibilities of the Subcontractor; or, if of the Subcontractor and any other subcontractor jointly, to name as such arbitrator the person upon whom they agree. 1929

The Contractor and the Subcontractor agree that—

(o) In the matter of arbitration, their rights and obligations and all procedure shall be analogous to those set forth in this contract.

Nothing in this article shall create any obligation on the part of the Owner to pay to or to see to the payment of any sums to any Subcontractor.

1930 ART. 38. ARCHITECT'S STATUS.—The Architect shall have general supervision and direction of the work. He is the agent of the Owner only to the extent provided in the Contract Documents and when in special instances he is authorized by the Owner so to act, and in such instances he shall, upon request, show the Contractor written authority. He has authority to stop the work whenever such stoppage may be necessary to insure the proper execution of the Contract.

As the Architect is, in the first instance, the interpreter of the conditions of the Contract and the judge of its performance, he shall side neither
1931 with the Owner nor with the Contractor, but shall use his powers under the contract to enforce its faithful performance by both.

In case of the termination of the employment of the Architect, the Owner shall appoint a capable and reputable Architect, whose status under the contract shall be that of the former Architect.

ART. 39. ARCHITECT'S DECISIONS.—The Architect shall, within a reasonable time, make decisions on all claims of the Owner or Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the
1932 Contract Documents.

The Architect's decisions, in matters relating to artistic effect, shall be final, if within the terms of the Contract Documents.

Except as above or as otherwise expressly provided in the Contract Documents, all the Architect's decisions are subject to arbitration.

ART. 40. ARBITRATION.—All questions subject to arbitration under this Contract shall be submitted to arbitration at the choice of either party to the dispute.

The Contractor shall not cause a delay of the work during any arbitration proceedings, except by agreement with the Owner. 1933

The demand for arbitration shall be filed in writing with the Architect, in the case of an appeal from his decision, within ten days of its receipt and in any other case within a reasonable time after cause thereof and in no case later than the time of final payment, except as otherwise expressly stipulated in the Contract. If the Architect fails to make a decision within a reasonable time, an appeal to arbitration may be taken as if his decision had been rendered against the party appealing. 1934

No one shall be nominated or act as an arbitrator who is in any way financially interested in this Contract or in the business affairs of either the Owner, Contractor or Architect.

Unless otherwise provided by controlling statutes, the parties may agree upon one arbitrator; otherwise there shall be three, one named in writing, by each party to this Contract, to the other party and to the Architect and the third chosen by these two arbitrators, or if they fail to select a third within fifteen days, then he shall be chosen by the presiding officer of the Bar Association nearest to the location of the work. Should the party demanding arbitration fail to name an arbitrator within ten days of his demand, his right to arbitration shall lapse. Should the other party fail to choose an arbitrator within said ten days, then such presiding officer shall appoint such arbitrator. Should either party refuse or neglect to supply the arbitrators with any papers or information demanded in writing, the arbitrators are empowered by both parties to proceed ex parte. 1935

1936 If there be one arbitrator his decision shall be binding; if three the decision of any two shall be binding. Such decision shall be a condition precedent to any right of legal action, and wherever permitted by law it may be filed in Court to carry it into effect.

The arbitrators, if they deem that the case demands it, are authorized to award to the party whose contention is sustained such sums as they shall deem proper for the time, expense and trouble incident to the appeal and, if the appeal was taken without reasonable cause, damages for delay. The arbitrators shall fix their own com-
1937 pensation, unless otherwise provided by agreement, and shall assess the costs and charges of the arbitration upon either or both parties.

The award of the arbitrators shall be in writing and it shall not be open to objection on account of the form of the proceeding or the award, unless otherwise provided by the controlling statutes.

In the event of such statutes providing on any matter covered by this article otherwise than as hereinbefore specified, the method of procedure throughout and the legal effect of the award shall be wholly in accordance with the said statutes, it being intended hereby to lay down a principle of
1938 action to be followed, leaving its local application to be adapted to the legal requirements of the jurisdiction having authority over the arbitration.

ART. 41. CASH ALLOWANCES.—The Contractor shall include in the contract sum all allowances named in the Contract Documents and shall cause the work so covered to be done by such contractors and for such sums as the Architect may direct, the contract sum being adjusted in conformity

therewith. The Contractor declares that the contract sum includes such sums for expenses and profit on account of cash allowances as he deems proper. No demand for expenses or profit other than those included in the contract sum shall be allowed. The Contractor shall not be required to employ for any such work persons against whom he has a reasonable objection. 1939

ART. 42. USE OF PREMISES.—The Contractor shall confine his apparatus, the storage of materials and the operations of his workmen to limits indicated by law, ordinances, permits or directions of the Architect and shall not unreasonably encumber the premises with his materials. 1940

The Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.

The Contractor shall enforce the Architect's instructions regarding signs, advertisements, fires and smoking.

ART. 43. CUTTING, PATCHING AND DIGGING.—The Contractor shall do all cutting, fitting or patching of his work that may be required to make its several parts come together properly and fit it to receive or be received by work of other contractors shown upon, or reasonably implied by, the Drawings and Specifications for the completed structure, and he shall make good after them as the Architect may direct. 1941

Any cost caused by defective or ill-timed work shall be borne by the party responsible therefor.

The Contractor shall not endanger any work by cutting, digging or otherwise, and shall not cut or alter the work of any other contractor save with the consent of the Architect.

1942 ART. 44. CLEANING UP.—The Contractor shall at all times keep the premises free from accumulations of waste material or rubbish caused by his employes or work, and at the completion of the work he shall remove all his rubbish from and about the building and all his tools, scaffolding and surplus materials and shall leave his work "broom clean" or its equivalent, unless more exactly specified. In case of dispute the Owner may remove the rubbish and charge the cost to the several contractors as the Architect shall determine to be just.

1943 SPECIAL CONDITIONS
SECTION
OF
SPECIFICATIONS
FOR
160-170 WEST 59TH STREET BUILDING
SYNDICATE SUBSCRIPTION CORPORATION
NEW YORK CITY
OWNERS.

1944 All work shall be executed and materials furnished in accordance with this specification and the accompanying drawings prepared by

FRANK GRAD, Architect
521 FIFTH AVENUE
NEW YORK CITY.

May 31, 1929.
H. R. S.

SPECIFICATION SECTION 1945

FOR

SPECIAL CONDITIONS

1. GENERAL NOTE:

These "Special Conditions" together with the General Conditions of the Contract of the American Institute of Architects current edition, shall apply to the work as a whole and to each and all branches of the work. No arrangements or contracts with sub-contractors are to be such as to conflict with same. They shall also apply to any modifications or extra work. 1946

2. SCOPE OF WORK REQUIRED:

The general extent and scope of the work to be performed under this contract is described by the specifications and shown and noted upon the accompanying drawings and schedules which are to cover the general construction further supplemented by explanatory details, it being intended to include all labor and materials, and transportation, even though not especially shown or noted, but which are necessarily required to obtain the completed condition contemplated by the contract in accordance with the obvious intent and meaning of the drawings and specifications and schedules as interpreted by the Architect. 1947

The work shall be executed in accordance with the explanations and directions, and to the satisfaction of the Owner, the Architect and/or their representatives.

1948 3. INSPECTION OF PREMISES, BID & CONTRACT FORM:

All information given by the drawings or specifications in respect to the site or the existing premises is supposedly correct. Before submitting his bid, however, each bidder shall carefully examine the drawings and specifications and shall visit the site or the existing premises and shall fully inform himself as to all existing conditions and limitations. He shall include as a part of his work such work as may be required to meet these existing conditions and limitations,
1949 even though they are not shown on or referred to in or accurately or fully described by the drawings and specifications. No consideration will be granted for any alleged misunderstanding of the materials to be furnished or work to be done, it being understood that the tender of a proposal carries with it the agreement to all items and conditions referred to herein or indicated on the accompanying drawings.

The Owner reserves the right to reject any or all bids.

If the Owner elects to let any part or all of the work, contract shall be closed on a form satisfac-
1950 tory to the contracting parties.

4. LAYING OUT THE WORK:

The General Contractor shall lay out the general lines and levels of the work on all floors, and be responsible for their correctness, but each Subcontractor shall do whatever further laying out that may be necessary in connection with his work

and be responsible therefor, (any damage to the work or other trades inclusive), keeping a competent foreman on the ground. 1951

5. COOPERATION:

Any work necessary under any heading for any branch of the trades to make possible the work under any other heading must be done, though not specifically mentioned and full cooperation must be practiced by all contractors on the work.

6. DRAWINGS AND SPECIFICATIONS:

The drawings referred to in the specification consist of general working drawings, which will be supplemented by detailed drawings furnished as the work progresses. All drawings are intended to cooperate with and form part of the specifications. Where figures are given they are to be followed in preference to measurements by scale. Large scale and full size drawings shall be followed in preference to small scale drawings. 1952

In all cases the details and drawings shall be checked with existing conditions and from work in place, and variations, if any, be referred to the Architect for adjustment, as the Contractor will be held responsible for the fit of work in place.

When a profile or other finished condition is shown, furring or other provision necessary to obtain such finished conditions shall be provided. 1953

Anything referring to a particular trade and which is not expressly set forth, but which may be reasonably implied shall be furnished and performed, the same as though specifically shown and mentioned in both specifications and drawings, without extra cost to the OWNER.

1954 Should anything be omitted from the drawings or specifications which is necessary to a clear understanding of the work or should any error appear either in the various instruments furnished or in the work done by other contractors, which affects the work included in this specification, it shall be the duty of the contractor to notify the Architect. In the event of his failing to give such notice prior to the execution of any sub-contract he shall assume all responsibility for the proper execution of the work.

Each contractor will be furnished with two sets of drawings and one copy of specification. Ad-
1955 ditional copies will be furnished at the Contractor's expense.

7. Temporary Light & Power:

The General Contractor shall provide the general temporary lighting and current for the building. Each sub-contractor shall provide and pay for any necessary special temporary lighting or power requirements, and shall be responsible for any wastage of current for lighting or power purposes in connection with his work.

8. Temporary Heating:

1956 (a) The temporary heating arrangements will be furnished, installed and operated as provided in the Specifications for Heating.

No salamanders or stoves will be permitted in the building.

(b) The General Contractor shall arrange for the enclosure of all openings after the walls and

roof are in place, so as to permit the maintaining of a 50 degree temperature during plastering and 60 degrees thereafter, and see that such temperatures are maintained. 1957

9. Protection:

Full protection shall be provided for any and all adjacent buildings, roofs, skylights, vault lights, etc., or any other property liable to damage.

Each contractor shall repair any and all damage or injury to adjoining property caused by his work, and leave the property in as good condition as before the work started; shall relieve the Owner of all responsibility for any claims due to such damage or inquiry, defend any and all actions at law brought in connection with such claims, and pay any and all damages awarded against the Owner, and/or the General Contractor under such actions at law. 1958

10. Work Excluded:

The following features are not included in the building contract but will be furnished and installed by the lessee:

1. Kitchen Equipment.
2. Refrigerators for Main Kitchen, Pantries, etc. In this connection, however, there is to be included in this contract any and all masonry walls and partitions enclosing main kitchen refrigerators. 1959
3. Awnings and window shades.

1960

4. Kitchen shelving, etc., for hotel kitchens and food storage rooms in basement.

5. Wire screens or partitions in connection with hotel kitchens.

6. Closet Beds.

7. Metal clothes lockers.

8. Furniture, drapes, hangings, lamps, or floor covering such as linoleum, carpet, rugs, etc.

9. Electric light bulbs or meters for sub-metering except as required for temporary lighting during construction.

1961

10. The interior painting and decorating on plastered walls and ceilings of the following rooms:

Breakfast Room and Terrace
Entrance Lobby and Foyer and Vestibules.
Mens and Ladies Lounge.
Main Corridor
Elevator Lobby
Fountain and Writing Lounge
Main Dining Room and Terraces.
Palm and Tea Room and Terrace
Private Dining Rooms and Public Corri-

1962

dor to same.
Cosmetic Room Vestibule to same.

1963

PRELIMINARY

AND

MISCELLANEOUS WORK
SECTION

OF

SPECIFICATIONS

FOR

160-170 WEST 59TH STREET BUILDING
SYNDICATE SUBSCRIPTION CORPORATION
NEW YORK CITY
OWNERS.

1964

All work shall be executed and materials furnished in accordance with this specification and the accompanying drawings prepared by

FRANK GRAD, Architect
521 FIFTH AVENUE
NEW YORK CITY.

May 31, 1929.
H. R. S.

—

SPECIFICATION SECTION

1965

FOR

PRELIMINARY

AND

MISCELLANEOUS WORK

1. GENERAL CONDITIONS:

The General Conditions of the Contract of the American Institute of Architects current edition, together with the Special Conditions to which this

1966 Contractor is referred, shall form an integral part of this Contract.

For General Conditions and Special Conditions see copies on file in the Office of the Architect, and also on file in the Office of the Owner. Bidders and Contractors are requested to read these carefully and claims of ignorance of the provisions contained therein shall not be held to relieve them from the obligations therein imposed.

The Contractor will be required to comply with such General Conditions and Special Conditions (except as herein otherwise specified) the same as
1967 if they were bound in with this specification. He shall, therefore, consult same before preparing his bid and shall fulfill same in executing his work.

2. Notice to Bidders:

Before submitting his proposal, each bidder shall examine all drawings relating to this work and shall become fully informed as to the extent and character of the work required and its relation to other works in this building. No consideration will be granted for any alleged misunderstanding of the materials to be furnished or work to be done, it being understood that the tender of a
1968 proposal carries with it the agreement to all items and conditions referred to herein or indicated on the accompanying drawings.

3. Verifying Existing Conditions:

This Contractor, before commencing work, shall verify all governing dimensions at the building and shall examine all adjoining work on which his work is in any way dependent for its perfect efficiency according to the intent of this specification, and no "waiver of responsibility" for

defective adjoining work will be considered unless notice of same has been filed by this Contractor and acceded to in writing by the Architect, before the Contractor begins any part of the work. 1969

4. The General Contractor:

The General Contractor shall lay out the work and be responsible for its correctness. He must watch the progress of the work without notice from any one, and shall do his portion of it at the proper time for such work. He shall not delay any other contractor by neglecting to do his work at the proper time nor shall he do his work or any part of it before the proper time, and he must be responsible for any loss occasioned by such lack of knowledge as to the proper time, or by any work done either before or after such time. 1970

He shall be responsible and make good to the Architect's satisfaction all defacements and injuries to neighboring properties done by him or men in his employ, or through his or their negligence, or to any work upon the building not in his contract, if done by him or men in his employ, or through his or their negligence.

He shall use, provide for and make all proper, necessary and sufficient precautions, safeguards and protections against the occurrence or happening of any accidents, injuries, damages or hurt, to any person or property, during the progress of the construction of work contracted for, and he must be responsible for, and indemnify and save harmless the Owners from the payment of all sums of money by reason of any such accidents, injuries or hurts that may happen or occur through him or men in his employ, or through his or their negligence. 1971

1972 He shall provide for particular care of all finished work as the Building progresses and the same must be protected from injury or defacement during the erection and until completion of the building, unless otherwise specified.

He shall be responsible for all injuries or accidents to the work (no matter how same may occur), or to any part of the same, up to the time of final completion and acceptance by the Owners, and he must make same good to the satisfaction of the Architect.

1973 He shall give every facility for the erection or introduction of any work or materials not included in his contract. He shall not allow waste materials or rubbish to accumulate in any part of the building, but must arrange for prompt removal of same. He shall deliver the work in a perfect and undamaged state, clean in all ways suitable for occupancy or use.

The General Contractor shall check all shop drawings of Sub-contractors before submitting same to the Architect, and shall then submit them to Architect with his comments and recommendations.

1974 He shall give all notices, procure and pay for all surveys, permits, inspectors' fees, licenses, etc., directly or indirectly necessary. He shall obey all laws, ordinances and rules and be responsible for any failure to do so.

He shall make all work conform to the Rules and Regulations of the National Board of Fire Underwriters' State Laws and the Laws of the Bureau of Building Inspection and Bureau of Housing and Sanitation, and other authorities having jurisdiction.

1975

5. SIDEWALK BRIDGE AND FENCE:

The General Contractor shall provide and erect suitable and substantial sidewalk bridge, fence, etc. for the protection of the Public, storage of materials, etc.

Provide heavy plank platform above, for storing materials and protection to the public, with waterproof shed below covered with roofing material and properly sloped to drain.

Provide and maintain electric lighting under the bridge.

All to be painted two coats of selected color paint. 1976

The entire bridge shall conform to the regulations and requirements of the Bureau of Highways and other departments having jurisdiction.

6. TEMPORARY OFFICE:

The General Contractor shall, at the beginning of the work, erect where directed, a temporary office not less than 10′ x 24′, divided in two parts. The one part for the use of the Sub-contractors and the other for the superintendent. Offices shall be provided with doors, windows, waterproof roof, heat and electric light. Provide in each office one work table 7′ x 4′, also racks for holding drawings. 1977

The General Contractor shall have charge of the offices, pay for all heat and light used, take proper care of offices and supply the superintendent and Architect with keys to same.

The offices shall be painted two coats of selected color paint.

Upon completion of the work, the General Contractor shall remove the offices.

1978

7. TELEPHONE.

In Superintendent's or Contractor's Office, as directed, there shall be placed a city telephone; this telephone to remain until the full completion of the building, and to be paid for by the General Contractor.

8. VAULT PERMITS:

The General Contractor shall include in his estimate the cost of any necessary permits for the construction of the sidewalk vaults.

1979 9. WATCHMEN:

The General Contractor shall employ and retain one or more competent watchmen on the premises at night and all times including Sunday and Holidays, until the entire operation is completed and until the Owner has taken charge of the building.

10. MAINTAINING SERVICES:

The General Contractor shall support and maintain in place and in operation all light poles, hydrants, piers, conduits, and other services on
1980 or under streets, and shall restore all such services if damaged.

11. STREET REPAIRS:

The General Contractor shall arrange for all repairs to street and adjoining sidewalks, made necessary by this work.

12. STREET GUTTERS:

All street gutters shall be kept free from and clear of any obstructions during the entire operation.

1981

13. TEMPORARY WATER & SEWER CONNECTIONS:

The Plumbing Contractor shall make or arrange for all necessary temporary water and sewer connections, and provide temporary toilet facilities, all as provided for in the Specifications for Plumbing, but the General Contractor shall furnish and install temporary enclosures for such toilet conveniences.

14. PUMPING & DRAINING:

The General Contractor shall do all pumping of surface or subsurface water, and draining of the property, other than is provided for under the Specification for Excavation. 1982

15. SCAFFOLDING, RUNWAYS, ETC:

All scaffolding required for the work of the various trades will be furnished and installed as specified under the Specification Section for the various trades, but this Contractor shall furnish and install all scaffolding required for any and all work included in the work of this contract, as herein specified.

No claims of additional costs of scaffolding, due to delay in delivery of steel, will be allowed.

This Contractor shall furnish, install and maintain, all general runways, rubbish chutes, temporary stairs, ladders, temporary or permanent hatch protection, etc., that may be required by the nature of the work. 1983

All runways, etc., hereinabove specified shall be altered, removed and rebuilt whenever required by the nature of the work, or as required.

16. CASH ALLOWANCES:

The General Contractor shall include in his estimate the following cash allowances for the features enumerated.

1984	Finishing Hardware F.O.B. building	$50,000.00
	Lighting Fixtures, installed, connected and including all inspection fees	50,000.00
	Medicine Cabinets F.O.B. building	10,000.00
	Serving Pantry Cabinets, installed	20,000.00
	Apartment Refrigerators, installed	70,000.00
	Tile Fountain in Fountain Lounge, installed	1,000.00
	Fireplaces, 18th to 38th floors, inclusive, cash	150.00
	Fireplaces, 39th and 40th floors, inclusive, cash	250.00

1985 Allowances for fireplaces are to cover hearths, facings, fireplace linings, mantels and shelves, installed complete.

PLAIN PAINTING
SECTION
OF
SPECIFICATIONS
FOR
160-170 WEST 59TH STREET BUILDING
SYNDICATE SUBSCRIPTION CORPORATION
1986 NEW YORK CITY
OWNERS

All work shall be executed and materials furnished in accordance with this specification and the accompanying drawings prepared by

FRANK GRAD, Architect
521 FIFTH AVENUE
NEW YORK CITY.

May 31, 1929.
H. R. S.

SPECIFICATION SECTION 1987

FOR

PLAIN PAINTING

1. GENERAL CONDITIONS:

The General Conditions of the Contract of the American Institute of Architects current edition, together with the Special Conditions to which this Contractor is referred, shall form an integral part of this Contract.

For General Conditions and Special Conditions see copies on file in the Office of the Architect, and also on file in the Office of the Owner. Bidders 1988
and Contractors are requested to read these carefully and claims of ignorance of the provisions contained therein will not be held to relieve them from the obligations therein imposed.

The Contractor will be required to comply with such General Conditions and Special Conditions (except as herein otherwise specified) the same as if they were bound in with this specification. He shall, therefore, consult same before preparing his bid and shall fulfill same in executing his work.

2. NOTICE TO BIDDERS:

1989

Before submitting his proposal, each bidder shall examine all drawings relating to this work and shall become fully informed as to the extent and character of the work required and its relation to other works in this building. No consideration will be granted for any alleged misunderstanding of the materials to be furnished or work to be done, it being understood that the tender of

1990 a proposal carries with it the agreement to all items and conditions referred to herein or indicated on the accompanying drawings.

3. Verifying Existing Conditions:

This Contractor, before commencing work shall verify all governing dimensions at the building and shall examine all adjoining work on which his work is in any way dependent for its perfect efficiency according to the intent of this specification, and no "waiver of responsibility" for defective adjoining work will be considered unless notice of same has been filed by this Contractor and acceded
1991 to in writing by the Architect, before the Contractor begins any part of the work.

4. Scope of Work:

There shall be included in the work of this contract the furnishing of all labor and material required for the installation complete of all plain painting, priming of carpentry and millwork, puttying, sandpapering, etc., and all work necessary for the execution of plain painting as shown on the drawings and schedule sheet and as hereinafter specified.

Work Not Included—There shall not be in-
1992 cluded in the work of this contract the painting or finishing of any cabinet work (see specification for Cabinet Work) or the painting of any piping included in the work of the Mechanical Trades, or the decorating of certain rooms enumerated in Article #10 of "Special Conditions".

All radiators will be delivered to the building and installed with a priming coat. This Contrac-

tor shall do finished painting of all radiators as hereinafter specified. 1993

5. Cooperation with Other Contractors:

This Contractor shall cooperate with all other contractors engaged in work on the building to the end that proper unity of action will facilitate the orderly progress of the work.

Shop drawings and other data that may be prepared by or for this Contractor for use in the installation of his work shall be given to those contractors who require the information contained therein.

6. Quality of Workmanship: 1994

All work which is to be performed under this contract shall be done by mechanics skilled in their respective trades in order to produce first class construction and installation of the work.

Mediocre workmanship will not be acceptable to the Architect.

7. Materials:

Pure White lead and pure linseed oil shall form the basis of all paint, unless otherwise specified.

All materials, as far as practicable, shall be delivered to the building in original containers and 1995 opened on the premises.

When once opened, said materials shall be stored in proper places and be protected from dust, water and other foreign matter and from all harmful influences likely to impair their qualities or usefulness.

1996 All faulty, damaged or condemned materials shall be promptly removed from the premises, whether under approved labels or not.

All shall be the product of the Arco Company, Lowe Bros., Sherwin Williams Company, Dupont, or Helton L. McCann Company, or equal as approved or selected by the Architect.

8. STORAGE:

This Contractor shall store all of his materials in one place, designated by the Superintendent, shall keep same neat and clean and repair all damage to surroundings.

1997 This Contractor shall exercise due care in the storage of paint, oil, rags, etc., to prevent danger of fire.

9. COLORS:

The colors for all finishing coats of paint shall be selected by the Architect. Each of the under coats shall be of slightly different shade from the preceding one.

10. NOTE:

The priming of the various parts and surfaces, is for the most part distributed throughout this
1998 specification and need not be repeated in fulfillment of the work described under this part.

This contractor shall refer to Plastering, carpentry and Millwork, Ornamental and Miscellaneous Iron Work, Tile and Marble work for height of wainscot. Kalemeined work and Metal Bucks, and Mechanical work for pipes and radiators for

interior finish and piping and radiators, and plastering requiring Painting and Finishing. 1999

Any work not included, must be so stated by this Contractor.

11. WORKMANSHIP: All workmanship shall be performed and executed in a neat, careful and painstaking manner, by skilled workmen acting under competent direction.

The Architects shall have arbitrary power of direction over the work to be done under these specifications. All work to be applied so as to show no brush marks or laps.

12. PREPARATION: 2000

All surfaces shall be cleaned down, dusted, puttied, cracks filled, defects removed, sandpapered and otherwise prepared and treated and made ready for receiving and assuring first-class results in finish and workmanship.

All knots and sappy places shall be shellaced with one or more coats of pure alcohol shellac, as required and properly sandpapered.

Corrosion, scale and dust must be removed from all metal surfaces before painting.

13. SPATTERING: 2001

The Contractor shall avoid spattering of glass, wood work, walls, floors, fixtures, apparatus, etc., with paint and finishing materials, and if any such spattering occurs, he shall at once thoroughly remove all evidences of the same, and shall repaint and finish any patched surfaces. This is to be done at his own expense and cost as soon as it appears.

2002 14. NUMBER OF COATS:

The number of coats of application of paint and of finishing materials specified, is sufficient to produce a first-class finish, when properly applied under normal conditions of surfaces, etc. However, if because of defects in said conditions, more coats are required, then this Contractor shall supply and apply whatever additional coats that may be required to accomplish a first-class piece of work, that is satisfactory to the Architects.

15. PRIMING:

2003 All parts of millwork to be primed by this Contractor, including parts not exposed to view. *Number of coats hereinafter specified, does not include the priming coat.*

All metal work, including Kalameined doors, etc., and as specified under various headings, will be primed by the Contractor furnishing that work.

16. INTERIOR WOOD WORK:

All finish in connection with cabinet work on the first floor will be done by the Contractor for the cabinet work. This Contractor shall not in-
2004 clude any finish in connection therewith. All other wood work except wood floors shall be painted or otherwise finished by this Contractor. All interior wood windows in the basement shall be painted three coats of lead and oil paint, in colors selected. All other wood doors, interior sash and all interior wood trim, such as wood base, picture moulding, etc., throughout the rest of the building shall be finished with one coat of pure thin alcohol shellac, one coat of flat enamel under coater and one coat of semi-gloss long oil enamel,

all in selected colors. Note that only the front edges of closet shelving are to be painted, the top and bottom of such shelving to be left unpainted. Applied mouldings in apartments, wherever same are indicated on the plans shall be finished with the walls. 2005

Wood hand rail on stairs, where same occurs, shall be filled and given one coat of thin alcohol shellac, three coats of rubbing varnish and rubbed with pumice and oil to a dull gloss.

17. Interior Metal Work:

All kalamein doors and metal bucks exposed in the kitchen and the basement, shall be finished with two coats of flat enamel under coater and one coat of long oil gloss enamel. All other kalamein doors and metal bucks in the basement to receive two coats of lead and oil paint in color selected. 2006

All other kalamein doors throughout building, including doors of Freight and Service Elevators to be painted with two coats of lead and oil paint in selected colors.

All metal bucks and trim throughout the building except elevator fronts on the first floor shall be finished with two coats of flat enamel under coater and one coat of semi-gloss long oil enamel, tinted as directed. 2007

All metal access doors shall be painted out with the walls.

All risers, treads, horses, wall skirting, underside of risers, treads and platforms, etc., in connection with pressteel stairs shall receive two coats of satin black paint. All stair rails and standards in connection with same to be painted with two coats of satin black paint.

All heat grilles, vent grilles, etc., to be painted or otherwise finished to match the work in which the grilles occur.

2008 Ornamental iron railings to receive three coats of lead and oil paint in selected colors.

All radiators throughout the building to receive two coats of selected metallic paint in selected colors.

All door checks to be finished to match the work upon which same occur.

All tin clad doors to be painted three coats of lead and oil paint ~~in~~ colors selected.

18. WALL AND CEILING PAINTING:

This Contractor shall *not* include any painting or decorating in connection with any plastered
2009 walls or ceiling surfaces in the following spaces:

Breakfast Room and Terrace
Fountain and Writing Lounge.
Entrance Lobby and Foyer and Vestibules.
Main Dining Room
Mens and Ladies Lounge.
Main Corridor
Elevator Lobby
Palm and Tea Dining Rooms and Public Corridor to same
Cosmetic Room, Vestibule to same.

Walls and ceilings in unasigned space, Steam
2010 Room, Incinerator Room, Transformer Vault, Refrigeration Room, and Elevator Pits in basement, also shops and fan room on first floor, Plenum Chamber and penthouse will *not* be painted.

The walls of the following spaces in the basement shall receive two coats of mill white, Receiving Room, Laundry, Paint Shop, Electricians Room, Carpenter Shop, Plumbers Shop, Valet Shop, and Telephone Terminal Room.

The Following rooms in the basement shall receive two coats of Maxwell's Cold Water paint,

Mechanical Equipment Room, Pump Room, Meter Room, Fan Room, Trunk Room, and Furniture Room. 2011

Gloss Finish—All Bath Rooms, Apartment Kitchens, Barber Shop, first floor Pantries, Service Corridors and Toilet Rooms, shall be finished with one coat of primer, two coats of flat enamel under coater and one coat of long oil gloss enamel.

All walls and ceilings in the basement kitchen and adjacent storage rooms, basement corridors, and first floor pantry, dish washing, shall also be finished with gloss enamel. This work shall be applied on *plaster, concrete, brick* and *hollow tile.*

Elevator Hatchways—The inside of all elevator hatchways shall be painted two coats of black masonry paint applied directly on the hollow tile block. 2012

Cement Base—Cement base in public corridors to be painted three coats of approved "cement paint" gloss finish, selected color.

Other walls and ceiling—All other walls and ceilings throughout, except as hereinotherwise specified to the contrary, shall be finished with one coat of flat wall primer and two coats of flat wall paint all to be lithophone base paint. The last coat in all Living Rooms, Bed Rooms, Foyers, and Public Corridors to be stippled. In all service corridors and service spaces from the first floor up inclusive there shall be a dark Dado 4′ 6″ high. 2013

19. NUMBERS:

Paint numbers of all floors at all door openings in all elevator hatchways, firetower and stairway.

Number shall be 6″ high.

Paint numbers on corridor doors to all suites and bed rooms, 2-¼″ high.

Specifications—Plain Painting

2014 All number in connection with passenger elevators only, shall be executed in gold leaf with colored liner.

All other numbers shall be executed, without liner.

20. GENERAL:

In all special cases that are not sufficiently covered and described in this specification, this contractor shall follow the special directions of the Architects, as to the application, colors, etc., required.

This specification shall include all painting and
2015 finishing throughout, except as hereinbefore specified to the contrary. All shades and colors shall be selected by the Architects and finished samples of all work must be submitted for their approval, before commencing the work.

Plaintiff's Exhibit 5, set of plans of building marked

Plans Approved
The Prudence Co., Inc.
P. J. Collins
2016 Date 6/14/29

and "These plans were used at the time of closing of Loan @ N. Y. office, compared with set approved by Bldg. Dept.—OK WGW" is omitted from the printed record pursuant to stipulation and order (*supra*, p. 565) subject to the right of either party to submit the same to the Court if so advised.

Plaintiff's Exhibit 6.

Sept 24-1929 2017

AMENDMENTS REQUIRED BY THE PRUDENCE COMPANY, INC., IN SPECIFICATIONS SUBMITTED BY FRANK GRAD, ARCHITECT, COVERING BUILDING TO BE ERECTED BY CENTRAL PARK PROPERTIES, INC., CENTRAL PARK SOUTH 100′ EAST OF SEVENTH AVENUE

Above specifications are approved as amended herein.

PRUDENCE CO. INC
by M BIGELOW
Asst Secy

STONE: 2018

Indiana limestone required. Drip cuts shall be provided in all projecting stone courses.

FLOORS AND DOOR SADDLES:

All corridor door saddles shall be of marble or terrazzo. Base and border of all corridors shall be marble, terrazzo or fireproof wood. Floors in all rooms shall be laid with blind joints.

Corridor base & border of cement if properly finished will be accepted.

MASONRY:

Around columns standard 2″ or 4″ column covering hollow tile shall be used. In elevator shafts smooth faced hollow tile partition block painted shall be used wherever walls are visible from elevator cars. 2019

PLASTER:

Patent plaster shall be used on all walls. Lime plaster will not be accepted.

Lath shall be Armco, Toncan, Truscan or equal, and any make other than those mentioned shall be subject to our approval.

2020 On ground floor lath used shall be Armco or Toncan.

HEATING:

All radiators shall be enclosed hung wall type of a make to be approved by us, shall be "Phantom" or equal

BOILER STACK:

Provision shall be made in and around location for boiler room for tops of column footings being brought down to a sufficient depth below the general floor level to accommodate boiler returns, etc.

2021 SOUND-PROOFING:

All partitions between apartments shall be sound-proofed.

PAINTING:

All painting and decorating shall be completed.

M. B.
L. H.

PLUMBING:

Make and type of all bath room fixtures shall be subject to our approval and bath tubs shall be
2022 5'6" where space permits, and in no case less than 5', excepting in servants' rooms, where same may be 4'6". Maddon or Standard or equal.

LEADERS AND VENTS:

Shall be galvanized wrought iron.

TILE:

Height of tile wainscoting on walls of bath rooms shall be at least 4'6" and around tubs 6' from floor.

Amendments to Specifications

REFRIGERATION:

Electric or gas refrigerators shall be installed in all serving pantries.

ELEVATORS:

~~Micro leveling elevators required.~~
Elevator doors on first floor shall be bronze.

VENTILATION:

All vent ducts shall be Armco, Toncan or Truscan or equal, and if any other make than those specified is used, same shall be subject to our approval.

SPECIAL ITEMS:

All mechanical and other equipment necessary to the operation of a building of this type, not including however hotel furniture and furnishings, shall be installed.

Where wood doors, saddles, cabinet work, etc. are specified, same shall be fireproof wood or kalamine to comply with the Building Code.

BRICK:

Samples of stone and brick shall be submitted for our approval.

M. B.
L. H.

Plaintiff's Exhibit 7, copy of letter from The Prudence Company to Central Park Properties, Inc., dated September 13, 1929, requesting financial statement in specified form, is omitted from the printed record, pursuant to stipulation and order (*supra*, p. 565) subject to the right of either party to submit the same to the Court if so advised.

Plaintiff's Exhibit 8.

2026 THE PRUDENCE COMPANY, INC. [MEMORANDUM]

To Mr. Johnston: From Mr. Bigelow:

Date Sept. 17, 1929

RE: Central Park Properties, Inc.—loan $6,650,000.—

I hand you herewith financial statement of A. E. Lefcourt which is approved.

M. B.

[LETTERHEAD OF A. E. LEFCOURT REALTY HOLDINGS.]

2027 September 13th, 1929.

Mr. Arthur H. Waterman,
c/o Prudence Co. Inc.,
331 Madison Avenue,
New York City.

Dear Mr. Waterman:—

In compliance with your request, I am herewith enclosing corrected financial statement as of August 31st, which now includes the net equities of the Lefcourt-National Building at Fifth Avenue & 43rd Street,—the Lefcourt-Clothing Center at
2028 Seventh Ave. 25th to 26th Streets, and the Lefcourt-Normandie Building at Broadway and 38th Street.

As per your request, I have also given you the contingent liability of notes still outstanding to the contractors on the three buildings mentioned above.

With thanks for all your co-operation in the past, I remain

Yours very truly,

A E LEFCOURT

AEL:L

Plaintiff's Exhibit 8

[Letterhead of A. E. Lefcourt Realty Holdings.]

2029

Confidential

Statement of A. E. Lefcourt Personal Holdings as of August 31, 1929

160,861 shares of Lefcourt Realty Common (Market value $4,021,525.00)	$3,000,000.
14,991 shares of Lefcourt Realty Preferred (Market value $494,967.00)	350,000.
2,000 shares of Lefcourt National Bank & Trust Co. (Market value $700,000.00)	500,000.
Cash in bank as of August 31st, 1929	133,495.65
Cash net equity building Fifth Ave. & 43rd St.,	2,300,000.
Cash net equity building Broadway & 38th St.,	800,000.
Cash net equity building Seventh Ave. 25th to 26th Sts.	1,000,000.
	8,083,495.65

2030

Bank Loans, A. E. Lefcourt—None

2031

Contingent Liability

A. E. Lefcourt endorsement on contractors notes Building Fifth Ave. & 43rd St.,	379,062.50
A. E. Lefcourt endorsement on contractors notes Building Seventh Ave. 25th to 26th Sts.,	179,062.50
A. E. Lefcourt endorsement on contractors notes Building Broadway & 38th St.,	115,972.50

A. E. Lefcourt

Plaintiff's Exhibit 9, copy of letter from The Prudence Company, Inc., to A. E. Lefcourt, dated
2032 September 14, 1929, is omitted from the printed record, pursuant to stipulation and order (*supra*, p. 565) subject to the right of either party to submit the same to the Court if so advised.

Plaintiff's Exhibit 10.

Pr. Guarantee B. L. A., etc. (5/27)—No. 240.

GUARANTEE ON LOAN TO CENTRAL PARK PROPERTIES, INC.,

In consideration of and to induce THE PRUDENCE
2033 COMPANY, INC., a New York corporation, as lender, to enter into a certain agreement for a building loan with CENTRAL PARK PROPERTIES, INC., a New York corporation, having its principal office at No. 1359 Broadway, Borough of Manhattan, New York City, as borrower, to be of even date and simultaneously executed and delivered herewith, such loan being in principal amount SIX MILLION SIX HUNDRED & FIFTY THOUSAND Dollars and to be secured by bond and first mortgage on premises located ~~at~~ on the north side of West 58th Street and the south side of West 59th Street, 100 feet east of 7th Avenue, in the Borough of Manhattan,
2034 New York City, ~~we,~~ I, ABRAHAM E. LEFCOURT, the undersigned, ~~individually, jointly and severally~~ guarantee to THE PRUDENCE COMPANY, INC., said lender, its successors and assigns, that CENTRAL PARK PROPERTIES, INC., said borrower, will continuously proceed with, construct and complete the building and improvements described in said building loan agreement in strict accordance with the terms thereof and with the plans and specifications therefor (after approval by lender), and that said borrower will furnish and install all

equipment ~~and furnishings~~ required under said agreement, plans and specifications, so that such building and improvements with equipment ~~and furnishings~~ will be fully completed and ready for occupancy and use within the time specified in said agreement, free and clear of all municipal violations, mechanics' or materialmen's liens or other liens or claims for work, labor, services, materials, machinery, fixtures or equipment furnished or installed in or about said building and improvements, and that said borrower will fully comply with all laws, rules, ordinances, regulations and requirements of the City and State of New York, , or any governmental department, officer or agent, applicable to the construction, completion, occupancy or use of said building and improvements with equipment ~~and furnishings~~ therein contained, and the undersigned further ~~individually, jointly and severally~~ guarantees that said borrower will keep and perform all the other terms and conditions of said agreement on its part to be performed and will make all the payments on its part required to be made under said agreement together with payment of principal and interest on the bond and mortgage mentioned in said agreement until completion of said building as aforesaid, and the undersigned likewise agree to forthwith make good any default of said borrower under said building loan agreement, bond or mortgage. 2035 2036 2037

And the undersigned further guarantees the prompt removal of any municipal violations and the prompt cancellation and/or discharge of record of any liens, and hereby indemnify and save harmless the lender from and against any loss or damage by reason of delay in completion of the building beyond the completion date fixed in said

agreement, and from and against any and all claims, costs, suits, judgments, counsel fees or other damages incurred or suffered by said lender in making good any default by said borrower or in performing or discharging any of the covenants or conditions of said agreement, and the undersigned ~~individually, jointly and severally~~ agree on demand to repay to lender with interest, any sums advanced or paid by lender in order to make good any such default by said borrower.

Said building loan agreement and/or plans and specifications are made a part hereof as if fully set forth herein and may be altered or modified without procuring the consent or approval of the undersigned and without releasing the undersigned from any liability hereunder, except that the principal amount of the mortgage mentioned in said agreement shall not be increased without the consent of the undersigned.

Any waiver or release by said lender of said borrower from performance of any of the provisions of said agreement or from compliance with any part of said plans and specifications, shall not release the undersigned except as to a default with respect to the item so waived or released by said lender. The undersigned hereby waive any and all notice of any default by the borrower under the terms of said building loan agreement.

And the undersigned, further guarantees to said lender, its successors and assigns, the punctual payment of the full principal sum and interest of the bond and mortgage above described and all amounts advanced and to be advanced thereon and of any extension agreement thereof, as said principal and interest become due thereunder,

and the faithful performance by the mortgagor of all the terms and conditions thereof; ~~and upon~~

~~delivery of the bond and mortgage, the undersigned, if requested by lender, will execute and deliver to lender a separate guarantee thereof on lender's usual form, but such guarantee shall not affect any of the remaining provisions of this instrument.~~ Lender shall give the undersigned ten days' advance notice in writing upon demanding payment from undersigned under this paragraph. 2041

Anything contained herein to the contrary notwithstanding, the obligation of the undersigned under this guarantee shall cease and this guarantee shall become null and void when the Municipal and/or State Departments having jurisdiction have issued the customary certificates of occupancy. 2042

Said lender may institute any action or pursue any remedy against the undersigned under this instrument immediately after default by said borrower in performing any provision of said agreement and/or in complying with such plans and specifications and/or in making payments required by such bond and mortgage or in performing the other terms thereof.

The terms "bond and mortgage" or similar words in each case where used herein, shall be construed to include the bond or bonds and mortgage or mortgages and any spreading, consolidation and/or extension agreement of two or more bonds and mortgages, which evidence the above mortgage indebtedness and security. 2043

The mailing of a demand in a sealed, post-paid envelope addressed to the undersigned at his ~~or her~~ address given below, by depositing it in any post-office, post-office station or letter box in the City of New York, shall be a sufficient demand hereunder.

Collateral Bond of A. E. Lefcourt

2044 This instrument shall inure to the benefit of The Prudence Company, Inc., its successors and assigns, and each and every holder of the bond and mortgage above mentioned, and shall bind the undersigned, ~~—h—~~ my heirs, executors, administrators and assigns.

WITNESS, hand and seal this 25th day of September, 1929.

A. E. LEFCOURT [L. S.]
Residing at Savoy Plaza

..... [L. S.]
2045 Residing at

..... [L. S.]
Residing at

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.:

On the 25th day of September, 1929, before me came ABRAHAM E. LEFCOURT, to me known to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

ALEXANDER JOHNSTON
2046 ALEXANDER JOHNSTON
Notary Public, Kings County
Kings Co. Clerk's No. 93; Reg. No. 198
N. Y. Co. Clerk's No. 252; Reg. No. 0-170
Bronx Co. Clerk's No. 17; Reg. No. 3045
Queens Co. Clerk's No. 1517; Reg. No. 4341
Commission expires March 30, 1930

Plaintiff's Exhibit 11.

[Letterhead of A. E. Lefcourt Realty Holdings.]

2047

January 2nd, 1930.

Prudence Company, Inc.,
331 Madison Avenue,
New York City.

Gentlemen:—

Attention of Mr. Wm. G. Walters

Re:—Central Park Properties
58th-59th Streets

2048

We wish to confirm herewith the visit your Mr. Walters paid our office last Tuesday, at which time he approved materials which we intend to use on the above mentioned job as follows:—

1. Sample of Limestone furnished by James McLaren & Sons, initialled and signed by your Mr. Walters.

2. Sample of Granite furnished by James McLaren & Sons, initialled and signed by your Mr. Walters.

3. Face Brick known as Darlington SK-5, Clear Selected, as furnished by Continental-Fiske, Inc., duly initialled and signed by your Mr. Walters.

2049

4. Court Brick known as Special Mingle Speckled Courts, duly initialled and signed by your Mr. Walters.

Plaintiff's Exhibit 11

2050 We have accordingly contracted to use these materials, and the samples which your Mr. Walters duly initialled will be kept at this office.

Awaiting your confirmation, we remain

Yours very truly,

CENTRAL PARK PROPERTIES, INC.
By L. HAAS
Secretary.

LH:EB
(CC Grad-Lush-Klein)

2051 **Plaintiff's Exhibit 12.**

January 6th, 1930

Central Park Properties, Inc.,
1359 Broadway,
New York, N. Y.

Att: Mr. Louis Haas, Secretary

Re: Central Park Properties, Inc.
58th-59th Street.

Gentlemen:

2052 The samples of face and court brick, together with the limestone and granite which I recently initialed and approved at your office, has this day been approved by the committee.

Very truly yours,

THE PRUDENCE COMPANY, INC.
By W. G. Walters, Ch. Eng.
ENGINEERING & INSPECTION DEPT.

WGW:FG

Plaintiff's Exhibit 13.

2053

January 7th, 1930

Central Park Properties, Inc.,
1359 Broadway,
New York, N. Y.

Att: Mr. Louis Haas, Secretary

Re: Central Park Properties
58th-59th Sts.

Gentlemen:

Regarding our conversation as to the omission of a rubbish chute in the final plans covering the above operation.

2054

This item has been given careful consideration, and we are pleased to state that the committee and in accordance with your opinion that a rubbish chute in this particular building would not be necessary.

Very truly yours,

THE PRUDENCE COMPANY, INC.
By W. G. Walters, Ch. Eng.
ENGINEERING & INSPECTION DEPT.

WGW:FG

2055

Plaintiff's Exhibit 14.

2056

cc: Mr. Walters, Engr. Dept.

January 21, 1930

Mr. Louis Haas, Secy.
Central Park Properties, Inc.
1359 Broadway
New York, N. Y.

Dear Sir:

Before giving our written approval of the plans of the Hotel Building you are erecting on the south side of Central Park West, 100′ east of
2057 Seventh Avenue, New York, there is one other item about the plans, which we wish to clear up.

We feel that the flooring in all the bedrooms and living rooms should be of 7/8ths inch hard wood, and that the plans should be amended to provide for this.

We trust that this will be satisfactory to you and that you will instruct Mr. Frank Grad accordingly.

Very truly yours,

Vice President.

GSB.R

2058

Plaintiff's Exhibit 15.

2059

[Letterhead of A. E. Lefcourt Realty Holdings.]

January 23rd, 1930

The Prudence Company,
162 Remsen Street,
Brooklyn, New York.

Attention of Mr. G. S. Braislin

Re: Central Park Properties
58th-59th Streets

Gentlemen:

2060

We are in receipt of your favor of the 21st instant, contents of which we do not quite understand owing to the fact that the question of cement floors was always intended to be installed on the above mentioned building, and you also state that "before giving our written approval of the plans" you ask that wood floors be replaced in place of the cement floors.

We wish to notify you that we already have your signed and stamped approval on the plans which we submitted to you and which show that cement floors were to be installed, and furthermore, if you will refer to the various conferences 2061
had with your Company, at which your Mr. W. Bigelow was always present, you will find this to be a fact.

Plaintiff's Exhibit 15

2062 Also at the time that the specifications were gone over with your Mr. Bigelow, if you will refer to the final accepted specification as approved by your Company on September 24th, 1929, you will find in the second paragraph of your specification under the heading "Floors and Door Saddles" that in this paragraph it is distinctly mentioned that "floors in all room shall be laid with blind joints". This certainly refers to and means cement finished floors.

Based upon your approval as outlined above, we awarded the contract for this work quite some time ago.

2063 It never was our intention to finish these floors in any other manner, and we can refer you to several other buildings of similar kind that also have used and installed cement finished floors.

Trusting this explanation will be entirely satisfactory to you, as we do not feel we should be called upon to make this change, we are

Yours very truly,

CENTRAL PARK PROPERTIES, INC.
By L HAAS
Secretary.

LH:EB

2064

Plaintiff's Exhibit 16.

2065

[Letterhead of A. E. Lefcourt Realty Holdings.]

January 24th, 1930.

Prudence Company,
162 Remsen Ave.,
Brooklyn, New York.

Attention of Mr. W. G. Walters

Re:—Central Park Properties
58th-59th Streets

Gentlemen:—

Confirming conference had on the 22nd instant 2066
on various matters pertaining to the construction of the above mentioned building, we would respectfully ask your permission, allowing us the use of Commercial Galvanized Wrought Pipe for soils, wastes, leaders and vents throughout the building.

None of these features as you well know, are subjected to any pressure, neither are any of them exposed to as severe moisture and atmospheric conditions as the pipes of the heating system (in which you have permitted us to use commercial black iron pipe) and in addition, the soil and waste pipes generally accumulate a surface deposit 2067
which effectively protects them from attack on the inside.

(Pencil note: but reduces the area clog.)

Plaintiff's Exhibit 16

Mr. Edward A. Kingsley, our Mechanical Engineer on this building, as well as other mechanical engineers who we professionally engaged on previous operations, feel very strongly that it would be a needless waste of money to use anything other than Commercial Galvanized Wrought Pipe for these features, and we are quite confident that you will approve of its use. We are also sure that if you will examine the enclosed list of buildings in which this material has been used successfully, that you will agree with us that it should be satisfactory for use on the above mentioned building.

Trusting that we may receive a favorable reply from you, as we are about ready to award the contract for this work, and thanking you in advance, we are

Yours very truly,

CENTRAL PARK PROPERTIES, INC.
By: L. HAAS
Secretary.

LH:EB
(CC Kingsley—
Grad-Lush-Klein)

(Pencil notes in margin: "This has been O. K. by committee of 1/24/29—W. G. W. Appr. for copper bearing steel pipe O. K. W. G. W.")

Plaintiff's Exhibit 17.

2071

[Letterhead of A. E. Lefcourt Realty Holdings.]

January 24th, 1930.

Prudence Company,
162 Remsen Ave.,
Brooklyn, New York.

Attention of Mr. W. G. Walters

Re:—Central Park Properties
58th-59th Streets

Gentlemen:—

2072

Confirming conversation had with you at the conference you attended in our office when we discussed the plumbing work to be done at the above mentioned building, we are enclosing herewith two folders of Thomas Maddock's Sons Pottery, showing the various fixtures we propose using on the above mentioned building, which are in confirmation of the discussion we had with you and which we were informed would receive your approval authorizing us to proceed.

Will you kindly approve one copy and return same to us, retaining one copy for your files.

Thanking you for your prompt reply, we remain 2073

Yours very truly,

Central Park Properties, Inc.
By: L. Haas
Secretary.

LH:EB
(CC Kingsley—
Grad-Lush-Klein)

Plaintiff's Exhibit 18.

2074

January 28, 1930

Central Park Properties, Inc.,
1359 Broadway,
New York, N. Y.

Att:—Mr. Louis Haas, Secretary.

Re:—Central Park So. S/S running
fr. W. 58th St. N.Y.C.

Gentlemen:—

We herewith acknowledge receipt of your letter of the 24th inst., and have considered your re-
2075 quest mentioned therein.

It was my opinion at this conference that a galvanized copper steel pipe is to be used instead of a wrought iron pipe, which we originally specified.

In view of the fact that the savings incurred can be used to a better advantage, such as higher grade plumbing fixtures, fittings, etc., we are hereby approving the change as requested.

Respectfully yours,

THE PRUDENCE COMPANY, INC.
By—W. G. Walters, Ch. Eng.
2076 ENGINEERING & INSPECTION DEPT.

WGW:FG

Plaintiff's Exhibit 19.

2077

January 31st, 1930

Central Park Properties, Inc.,
1359 Broadway,
New York, N. Y.

Att:—Mr. Louis Haas, Secretary

Re:—Central Park South, S/S to
W. 58th St. 100' E. 7th Av.

Gentlemen:—

Attached herewith please find folder which you submitted for our approval.

You will note therein that all of the fixtures 2078
except the showers have been approved.

In reference to the showers, we will require that a mixing valve be incorporated therein. I am however, leaving this question open for later discussion, which is in accordance with our recent telephone conversation.

I sincerely regret witholding this approval for the past two days, and beg to remain

Respectfully yours,

THE PRUDENCE COMPANY, INC.
By—

2079

(Signed)—W. G. Walters, Ch.Eng.
ENGINEERING & INSPECTION DEPT.

WGW:FG

Plaintiff's Exhibit 20.

2080

February 4th, 1930

Central Park Properties, Inc.,
1359 Broadway,
New York, N. Y.

Att: Mr. Louis Haas, Secretary

Re: Central Park So. S/S running thru. to W. 58th St. N. Y. C.

Gentlemen:

We take this opportunity to acknowledge receipt of your letter of the 3rd inst.

2081

Your request as mentioned therein is agreeable to us on the conditions as you set forth in the above mentioned letter.

Respectfully yours,

THE PRUDENCE COMPANY, INC.
By W. G. Walters, Ch. Eng.
ENGINEERING & INSPECTION DEPT.

WGW:FG

2082

Plaintiff's Exhibit 21.

[Letterhead of A. E. Lefcourt Realty Holdings.] 2083

February 3rd, 1930.

The Prudence Company, Inc.,
162 Remsen Street,
Brooklyn, New York.

Attention of Mr. W. G. Walters

Re: Central Park Properties—58th-59th Sts.

Gentlemen:

We thank you for your favor of the 31st ultimo, returning to us the folder containing the plumbing fixtures we intend to install at the above mentioned building. 2084

We note in your letter the exception you take to the showers, wherein you suggest that you will require a mixing valve on the showers.

May we in this respect, ask that for the time being, you omit this exception for the reason that we have gone into the question of the mixing valve very thoroughly and find that it is the universal opinion in the majority of cases, of some very learned and experienced engineers, that the ordinary hot and cold water faucets on the showers 2085 are much more practical than the mixing valve for the reason that the mixing valve is not practical in any way whatsoever.

You might be aware of a recent law-suit that occurred against one of the prominent hotels of this city, wherein a guest of the hotel secured a judgment of $160,000. against this hotel on account of the guest being scalded by hot water through the mixing valve not operating properly,

2086 and this could not have occurred had this person used the ordinary hot and cold water faucets on the shower.

If you will allow us to go along without the mixing valve at the present time, we feel quite confident that in the very near future there will be perfected and patented a certain small apparatus that will absolutely be fool-proof and will automatically shut off the hot water at any given temperature that will be designated on this small valve.

We can assure you that we are not asking you to allow the omission of this mixing valve, in any
2087 manner of trying to save any money, as we would gladly spend an equal amount of the cost of this mixing valve in some other direction on the building.

Trusting after giving this letter due consideration, you will agree with us, and that we may have a favorable reply from you, with the assurance that as soon as this new valve is perfected and put on the market, we will be more than pleased to install it on all of the showers, and awaiting your kind reply, we remain

Yours very truly,

2088 CENTRAL PARK PROPERTIES, INC.
By L HAAS
Secretary.

LH:EB.
(CC Grad-Kingsley-Youngs-Lush-Klein)

Plaintiff's Exhibit 22.

[Letterhead of A. E. Lefcourt Realty Holdings.]

2089

February 5th, 1930.

Mr. G. S. Braislin, Vice President
The Prudence Company, Inc.,
331 Madison Avenue,
New York City.

Dear Sir:

Mr. Haas brought to my attention the letter that he wrote to you on January 23rd in answer to your letter of the 21st in reference to your late request for wood floors in certain rooms to be installed in the 59th Street Building now being constructed. Mr. Haas also mentioned his telephone conversation with you.

2090

While I have always been in the position to cooperate with anyone in my life, at the same time, I do not see how you can possibly make this request at this late date, particularly so when our agreement and specifications were agreed upon between us for cement floors along the same lines as the Savoy Plaza, which we spoke about at the time we drew up the agreement.

2091

Wooden floors as we all know, are a thing of the past, and so are rugs. I believe that the Savoy Plaza Hotel where I have been living for the past three years is a fair example of what is being done and built in up-to-date apartment hotels.

Plaintiff's Exhibit 22

2092 Under the circumstances, therefore, I feel that the plans and specifications accepted by you at the time we drew up the agreement between us, shall stand. I assure you that this is not a question of dollars and cents, but merely a question of principle, as well as the fact as stated above, that wooden floors are not wanted today in up-to-date apartment hotels.

Very truly yours,

A E LEFCOURT

AEL:L

2093

2094

Plaintiff's Exhibit 23.

March 15, 1930 2095

Central Park Properties, Inc.,
1359 Broadway,
New York, N. Y.

Att: Mr. Louis Haas, Secretary.

Re: Central Park So. S/S running
Thro. to W. 58th St. N. Y. C.

Gentlemen:

In reference to your letter of the 3rd inst., your request contained therein has been considered.

You are advised that this department has no 2096
objection to the use of the enamel iron tub and sink as submitted, providing the fixtures mentioned therein are of similar patent and size as were heretofore approved.

It is also understood that this enamel is subject to the acid test provided by the manufacturer.

Very truly yours,

THE PRUDENCE COMPANY, INC.
By W. G. Walters, Ch. Eng.
ENGINEERING & INSPECTION DEPT.

WGW:FG

2097

Plaintiff's Exhibit 24.

2098

[Letterhead of A. E. Lefcourt Realty Holdings.]

March 24th, 1930.

The Prudence Co.,
162 Remsen Street,
Brooklyn, N. Y.

Re:—Central Park Properties
Att. Mr. W. G. Walters

Gentlemen:—

2099 We hereby request reconsideration as to the use of a cement base with a wood moulding at top in place of the moulded wood base as specified.

As you know, it is a known fact that a cement base with a moulded wood top is more durable and sanitary and less of an unkeep than the fireproof moulded wood base, as the chemical injected for the fireproofing of the wood usually reacts upon the outside surface of the base, causing the scaling and peeling off of the paint surface, thereby leaving a very unsightly condition. You will recall that the manager of the Savoy Plaza also called our attention to this fact and condition a

2100 short time ago.

Your reconsideration regarding this matter would be greatly appreciated.

Very truly yours,

Central Park Properties, Inc.
By L. Haas
Secretary.

EHK:LS K.

Plaintiff's Exhibit 25.

2101

[Letterhead of A. E. Lefcourt Realty Holdings.]

April 7, 1930

Prudence Co.
162 Remsen St.
Brooklyn, N. Y.

Re: Central Park Properties

Att: Mr. W. G. Walters, Chief Engr.
Engineering & Inspecting Dept.

Gentlemen:

2102 We hereby request reconsideration as to the use of 2" gypsum block in place of terra cotta blocks for incasing of all of the interior columns.

We are asking for the above in view of the fact that on one of our recent jobs, we had considerable trouble with the Building Department in using the so-called 2" terra cotta blocks but which in reality are 1⅞" thick. The Building Department, as an alternative, said that they would accept the full 2" solid gypsum block which we used throughout the balance of this said operation and which passed the Building Department's requirements.

2103 We therefore kindly ask you to give us permission to use the full 2" solid gypsum blocks in place of the 1⅞" terra cotta blocks.

Hoping to receive an early reply from you regarding the above matter, we remain

Very truly yours,

Central Park Properties, Inc.
By L. Haas
K.

EHK:BS

Plaintiff's Exhibit 26.

2104

April 8th, 1930

Central Park Properties, Inc.,
1359 Broadway,
New York, N. Y.

Attention of: Mr. Klein

Re: Central Park So. running thru.
to West 58th St. Manhattan, N. Y.

Gentlemen:—

Upon my visit to the above operation on Mon-
2105 day, April 7th, I noticed a load of tubs being delivered to the job.

You will recall our letter of the 15th ultimo, wherein we stipulated that the enamel-ware was to be of acid resisting enamel.

The tubs being delivered are not in accordance with the above stipulation. We, therefore, instructed your superintendent to stop deliveries and installation of same.

Trusting you will give the above matter your immediate attention, we remain

Very truly yours,

2106 THE PRUDENCE COMPANY, INC.
By—W. G. Walters, Ch.Eng.
ENGINEERING & INSPECTION DEPT.

WGW:FG

Plaintiff's Exhibit 27.

April 10th, 1930 2107

Central Park Properties, Inc.,
1359 Broadway,
New York, N.Y.

Att:—Mr. Louis Haas, Secretary

Re: Central Park So. running thru.
to West 58th Street—Manhattan.

Gentlemen:—

This is to advise you that we have approved the following materials and equipment for use in the construction of the above building. 2108

1. McQuay copper radiators.
2. Electrolux gas ranges.
3. Copperior copper bearing sheet steel for duct work, etc.
4. Hardware, as outlined in the specifications received April 10th, 1930.
5. Speakman brass fittings, in accordance with cuts submitted.

Our requirements as previously requested in regard to mixometers, has been waived. 2109

Very truly yours,

THE PRUDENCE COMPANY, INC.
By—W. G. Walters, Ch.Eng.
ENGINEERING & INSPECTION DEPT.

WGW:FG

Plaintiff's Exhibit 28.

2110

April 10th, 1930

Central Park Properties, Inc.,
1359 Broadway,
New York, N. Y.

Att:—Mr. Louis Haas, Secretary

Re:—Central Park So. S/S running thru. to W. 58th St.—Manhattan.

Gentlemen:—

Your letter of April 7th, is hereby acknowl-
2111 edged.

In view of the circumstances, as stated therein, the use of 2″ solid gypsum blocks for the fireproofing of the columns, is acceptable to us, providing, however, that 2″ terra cotta blocks are used around columns wherever wall tile is applied thereto, and plastered with cement plaster to make up the thickness required by the Building Department.

The above acceptance is on condition that same is also approved by the Building Department of the Borough of Manhattan.

2112 Very truly yours,

THE PRUDENCE COMPANY, INC.
By—W. G. Walters, Ch.Eng.
ENGINEERING & INSPECTION DEPT.

WGW:FG

Plaintiff's Exhibit 29.

April 10th, 1930 2113

Central Park Properties, Inc.,
1359 Broadway,
New York, N. Y.

Att: Mr. Louis Haas, Secretary.

Re: Central Park So. S/S running thru.
to West 58th St. New York City.

Gentlemen:

Confirming a conference held in this office, on April 9th, we wish to advise you that our requirement as stipulated in our letter of March 15th, has 2114
been re-considered.

In lieu of same, we will accept the Wold Duro-Enamel bath tubs for use in the above operation. The kitchen and pantry sinks are to be of acid resisting enamel, as manufactured by the above company.

Very truly yours,

THE PRUDENCE COMPANY, INC.
By W. G. Walters, Ch. Eng.
ENGINEERING & INSPECTION DEPT.

WGW:FG

2115

Plaintiff's Exhibit 30.

2116

April 15th, 1930

Central Park Properties, Inc.,
1359 Broadway,
New York, N. Y.

Att: Mr. Louis Haas, Secretary

Re: Central Park So. S/S running thru. to West 58th St. E. 7th Ave. N.Y.C.

Gentlemen:

Will you kindly have your tile contractor submit certificates for the tile to be used on the above
2117 operation. These certificates are to certify as to the quality of the tile furnished in shipments and containers.

Your kind attention to the above will be greatly appreciated.

Very truly yours,

THE PRUDENCE COMPANY, INC.
By W. G. Walters, Ch. Eng.
ENGINEERING & INSPECTION DEPT.

WGW:FG

2118

Plaintiff's Exhibit 31.

2119

April 15, 1930

Central Park Properties, Inc.,
1359 Broadway,
New York, N. Y.

Attention: Mr. Louis Haas, Secretary

Re: Central Park So. S/S running thru.
to W. 58th St. E. 7th Ave. Manhattan.

Gentlemen:

Your request as outlined in your letter of the 24th ultimo, has been carefully considered.

2120

We wish to advise you that same has been approved by us on condition that a sketch be submitted, showing the height and profile of the base.

Will you kindly give the above matter your immediate attention, and oblige

Very truly yours,

THE PRUDENCE COMPANY, INC.
By W. G. Walters, Ch. Eng.
ENGINEERING & INSPECTION DEPT.

WGW:FG

2121

Plaintiff's Exhibit 32.

2122

April 21st, 1930

Central Park Properties, Inc.,
1359 Broadway,
New York, N. Y.

Att: Mr. L. Haas, Secretary

Re: Central Park So. S/S running through to W. 58th St. 100' E. of 7th Avenue, Manhattan, N. Y.

Gentlemen:

2123 Confirming conversation in this office today, with your Mr. Klein, we wish to advise you that we have amended the glazing specification as follows.

For the lower sash of all windows on the 7th floor and above, glass is to be of double strength 26 oz. d.s.A., flat drawn sheet glass, in accordance with the sample submitted.

Very truly yours,

THE PRUDENCE COMPANY, INC.
By W. G. Walters, Ch. Eng.
ENGINEERING & INSPECTION DEPT.

2124 WGW:FG

Plaintiff's Exhibit 33.

Date—Mar. 4/30

REQUISITION FOR ADVANCE ON BUILDING LOAN

LOCATION—155-165 W. 58 St. & 160-170 W. 59 St.

BORROWER—Central Park Properties, Inc.

REQUISITION No. 1.

CERTIFICATE OF ARCHITECT

THIS IS TO CERTIFY that.....

.....

has substantially completed miscellaneous construction work in connection with the construction of.....

at, ... amounting to.....for labor and materials actually incorporated in said building.

.....

Architect.

Budget Item No.	Class of Work	1 Name of Sub-Contractor	2 Estimated Sub-Contracts To Be Let	3 Sub-Contracts Let Exclusive of Extras	4 Extras or Deductions	5 Total Value of Work Incorporated To-Date	6 Prudence Co., Inc. Appraisal
1	Operation Costs		133,000.00	171,879.56		125,129.56	
	Itemize under Remarks						
2	Plant Equipment						
	Itemize under Remarks						
3	Excavation						
4	Shoring and Sheet Piling	Geo. J. Atwell		146,938.31	13,382.02	160,320.33	
5	Foundations and Piers						
6	Waterproofing—Damproofing, Sprandel		10,000.00				
7	Steel Structure	A. E. Norton		472,000.00		283,200.00	
8	Orn. Iron and Bronze	Madison Iron Wks.	Bronze 35,000.00	36,500.00		3,650.00	
9	Brickwork						
	Excluding Partitions See No. 25	J. H. McNally, Inc.		475,100.00		4,751.00	
10	Plumbing + 16 ●	C. H. Darmstadt		600,000.00		6,000.00	
11	Floor Arches + 24	Pietronski & Konap		260,000.00		52,000.00	
12	Electric Work ●	Lord Electric Co.		130,000.00		13,000.00	
13	Granite + 14	James McLaren & Son		38,750.00		1,937.50	
14	Cut Stone, Facade						
15	Elevators	Otis Elevator Co.		211,031.00		2,110.31	
16	Heating						
17	Carpentry—Rough						
	Separate from Finished Carpentry						
18	Hardware—Rough						
19	Wood Win. Frames and Sash						
20	Met. Win. Frames and Sash	S. H. Pomeroy Co. Inc.		61,600.00			
21	Glass and Glazing		45,000.00				
22	Sheet Met. and Skylights						
23	Roofing + 22	Fordham Cornice		16,700.00			
24	Cin. Fill and Cem. Finish						
25	Partitions						
	Keep separate from Brickwork						
26	Dumbwaiters						
27	Metal Lath and Furring + 28		350,000.00				
28	Plastering						
29	Ventilation						
30	Carpentry Finish		250,000.00				
	Doors and Trim	Hollow Metal Prod. Corp.		70,000.00			
	Doors and Trim						
	Hardware						

Budget Item No.	Class of Work	1 Name of Sub-Contractor	2 Estimated Sub-Contracts To Be Let	3 Sub-Contracts Let Exclusive of Extras	4 Extras or Deductions	5 Total Value of Work Incorporated To-Date	6 Prudence Co., Inc. Appraisal	7 Total Cash Paid on Contracts per Receipts Submitted
1	Operation Costs		133,000.00	171,879.56		125,129.56		
	Itemize under Remarks							
2	Plant Equipment							
	Itemize under Remarks							
3	Excavation							
4	Shoring and Sheet Piling	Geo. J. Atwell		146,938.31	13,382.02	160,320.33		
5	Foundations and Piers							
6	Waterproofing—Damproofing, Sprandel		10,000.00					
7	Steel Structure	A. E. Norton		472,000.00		283,200.00		
8	Orn. Iron and Bronze	Madison Iron Wks.	Bronze 35,000.00	36,500.00		3,650.00		
9	Brickwork							
	Excluding Partitions See No. 25	J. H. McNally, Inc.		475,100.00		4,751.00		
10	Plumbing + 16	C. H. Darmstadt		600,000.00		6,000.00		
11	Floor Arches + 24	Pietronski & Konap		260,000.00		52,000.00		
12	Electric Work	Lord Electric Co.		130,000.00		13,000.00		
13	Granite + 14	James McLaren & Son		38,750.00		1,937.50		
14	Cut Stone, Facade							
15	Elevators	Otis Elevator Co.		211,031.00		2,110.31		
16	Heating							
17	Carpentry—Rough							
	Separate from Finished Carpentry							
18	Hardware—Rough							
19	Wood Win. Frames and Sash							
20	Met. Win. Frames and Sash	S. H. Pomeroy Co. Inc.		61,600.00				
21	Glass and Glazing		45,000.00					
22	Sheet Met. and Skylights							
23	Roofing + 22	Fordham Cornice		16,700.00				
24	Cin. Fill and Cem. Finish							
25	Partitions							
	Keep separate from Brickwork							
26	Dumbwaiters							
27	Metal Lath and Furring + 28		350,000.00					
28	Plastering							
29	Ventilation							
30	Carpentry, Finish		250,000.00					
31	Kal. Doors and Trim	Hollow Metal Prod. Corp.		70,000.00				
32	Hol. Met. Doors and Trim							
33	Finished Hardware		40,000.00					
34	Interior Marble		30,000.00					
35	Tile Work							
	Halls and Bathrooms		100,000.00					
36	Terrazzo		10,000.00					
37	Mail Chute and Box		9,000.00					
38	Apt. Ice Boxes		70,000.00					
39	Painting and Paint Finish		125,000.00					
40	Wood Floors		5,000.00					
41	Bath Room Accessories							
	Itemize under Remarks		20,000.00					
42	Electric Fixtures		50,000.00					
43	Kitchen Equipment							
	Itemize under Remarks		45,000.00					
44	Furnishings	Garbage Distributors	12,000.00					
	Itemize under Remarks	Medicine Chests	10,000.00					
45	Refrigerating Plant		20,000.00					
46	Revolving Doors		5,000.00					
47	Laundry Equipment							
48	Sidewalk Bridge	Chesebro, Whitman		5,545.00				
49	Arch. Terra Cotta	O. W. Ketcham		32,500.00				
50	Shower Doors		1,000.00					
51	Sound proofing		15,000.00					
			1,390,000.00	2,728,543.87	13,382.02	652,098.70		
			TENTATIVE NOT FINAL					

Plaintiff's Exhibit 33.

Date—Mar. 4/30

CERTIFICATE OF ARCHITECT

THIS IS TO CERTIFY that.....

.....

has substantially completed miscellaneous construction work in connection with the construction of.....

at, ... amounting

to.....for labor and materials actually incorporated in said building.

.....

Architect.

IMPORTANT

The Architect's certificate and the affidavit must be signed and acknowledged before advances can be made.

STATE OF
COUNTY OF } ss.:

.....being duly sworn, deposes and says that he is.....of .....the owner of .....building in course of construction at..... that the estimated cost of all contracts heretofore let and to be let are shown in the statement herein below set forth; that said contracts are all the contracts necessary for the completion of said building, in accordance with plans and specifications heretofore submitted to The Prudence Company, Inc., and that said amounts here below set forth are correct. Said deponent is fully informed of said facts and makes this affidavit for the purpose of inducing The Prudence Company, Inc., to make payments from time to time on account of a loan to said owner, covering said building, to be used for paying for labor, work and material, in accordance with the various contracts and sub-contracts for the erection of said building.

Sworn to before me this.....day

of .....19...

.....

2 timated Contracts Be Let	3 Sub-Contracts Let Exclusive of Extras	4 Extras or Deductions	5 Total Value of Work Incorporated To-Date	6 Prudence Co., Inc. Appraisal	7 Total Cash Paid on Contracts per Receipts Submitted	8 Amounts Now Due Sub-Contractors	Remarks	
133,000.00	171,879.56		125,129.56				Architect—Frank Grad	10,000.00
							Mech. Eng.—E. A. Kingsley	9,450.00
							Cons. Eng.—Chas. Mayer	12,889.21
							Models—Newman Even	975.00
							Architect—Emery Roth	80,000.00
	146,938.31	13,382.02	160,320.33				Core—Borings—Sprague & Henwood	1,199.25
							Water Connection—Zucker Water Service	2,366.10
10,000.00								116,879.56
	472,000.00		283,200.00					
35,000.00	36,500.00		3,650.00				Material Hoist—Chesebro Whitman	55,000.00
	475,100.00		4,751.00				Estimate	
	600,000.00		6,000.00				Permits 10,000.00	
	260,000.00		52,000.00				Temp. platform 15,000.00	
	130,000.00		13,000.00				Shanties 3,000.00	
	38,750.00		1,937.50				Temp. Current 5,000.00	
							Payroll 100,000.00	
	211,031.00		2,110.31					133,000.00
	61,600.00							
45,000.00								
	16,700.00							
350,000.00								
250,000.00								
	70,000.00							
40,000.00								

Plaintiff's Exhibits 34 (2 checks representing the advance made upon the foregoing requisition), 35 (10 similar requisitions, dated March 31, 1930,

nated ontracts e Let	3 Sub-Contracts Let Exclusive of Extras	4 Extras or Deductions	5 Total Value of Work Incorporated To-Date	6 Prudence Co., Inc. Appraisal	7 Total Cash Paid on Contracts per Receipts Submitted	8 Amounts Now Due Sub-Contractors	Remarks	
33,000.00	171,879.56		125,129.56					
							Architect—Frank Grad	10,000.00
							Mech. Eng.—E. A. Kingsley	9,450.00
							Cons. Eng.—Chas. Mayer	12,889.21
							Models—Newman Even	975.00
	146,938.31	13,382.02	160,320.33				Architect—Emery Roth	80,000.00
							Core—Borings—Sprague & Henwood	1,199.25
10,000.00							Water Connection—Zucker Water Service	2,366.10
	472,000.00		283,200.00					116,879.56
35,000.00	36,500.00		3,650.00				Material Hoist—Chesebro Whitman	55,000.00
	475,100.00		4,751.00				Estimate	
	600,000.00		6,000.00				Permits 10,000.00	
	260,000.00		52,000.00				Temp. platform 15,000.00	
	130,000.00		13,000.00				Shanties 3,000.00	
	38,750.00		1,937.50				Temp. Current 5,000.00	
	211,031.00		2,110.31				Payroll 100,000.00	
								133,000.00
	61,600.00							
15,000.00								
	16,700.00							
30,000.00								
50,000.00								
	70,000.00							
40,000.00								
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10,000.00								
9,000.00								
70,000.00								
25,000.00								
5,000.00								
20,000.00								
50,000.00								
45,000.00								
12,000.00								
10,000.00								
20,000.00								
5,000.00								
	5,545.00							
	32,500.00							
1,000.00								
15,000.00								
00,000.00	2,728,543.87	13,382.02	652,098.70					
NTATIVE T FINAL								

Plaintiff's Exhibits 34 (2 checks representing the advance made upon the foregoing requisition), 35 (10 similar requisitions, dated March 31, 1930, to September 22, 1930), and 36 (20 checks for further advances under such requisitions) are omitted from the printed record, pursuant to stipulation and order (*supra*, p. 565), subject to the right of either party to submit the same to the Court if so advised.

Plaintiff's Exhibit 37.

Date—October 6/30

REQUISITION FOR ADVANCE ON BUILDING LOAN

LOCATION—155-165 W. 58th St. & 160-170 W. 59th St.
BORROWER—Central Park Properties, Inc.

REQUISITION No. 12

October 6, 1930

CERTIFICATE OF ARCHITECT

THIS IS TO CERTIFY that.....

.....

has substantially completed miscellaneous construction work in connection with the construction of.....

at, ... amounting to.....for labor and materials actually incorporated in said building.

.....
Architect.

IMPORTA

The Archi
certificate
the affid
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and acknowl
before adv
can be made

Budget Item No.	Class of Work	1 Name of Sub-Contractor	2 Estimated Sub-Contracts To Be Let	3 Sub-Contracts Let Exclusive of Extras	4 Extras or Deductions	5 Total Value of Work Incorporated To-Date	6 Prudence Co., Inc. Appraisal	7 Total Cash P on Contrac per Receip Submitted
1	Operation Costs Itemize under Remarks							
2	Plant Equipment Itemize under Remarks							
3	Excavation							
4	Shoring and Sheet Piling							
5	Foundations and Piers							
6	Waterproofing							
7	Steel Structure							
8	Orn. Iron and Bronze							
9	Brickwork Excluding Partitions See No. 25							
10	Plumbing							
11	Floor Arches							
12	Electric Work							
13	Granite							
14	Cut Stone, Facade							
15	Elevators							
16	Heating							
17	Carpentry—Rough Separate from Finished Carpentry							
18	Hardware—Rough							
19	Wood Win. Frames and Sash							
20	Met. Win. Frames and Sash							
21	Glass and Glazing							
22	Sheet Met. and Skylights							
23	Roofing							
24	Cin. Fill and Cem. Finish							
25	Partitions Keep separate from Brickwork							
26	Dumbwaiters							
27	Metal Lath and Furring							
28	Plastering							
29	Ventilation							
30	Carpentry Finish							
31	Kal. Doors and Trim							
32	Hol. Met. Doors and Trim							
33	Finished Hardware							
34	Interior Marble							

On October 3rd, 1930, the Bureau of Buildings of the Borough of Manhattan, City of New York, issued to the Central Park Properties, Inc., the usual Certificate of Completion #16873 (which is being delivered to you herewith) and we respectfully apply for the final payment due us amounting to $820,000 in accordance with agreement with you.

Very truly yours,

CENTRAL PARK PROPERTIES, INC.

By: LOUIS HAAS
Treasurer.

Architect.

udget tem No.	Class of Work	1 Name of Sub-Contractor	2 Estimated Sub-Contracts To Be Let	3 Sub-Contracts Let Exclusive of Extras	4 Extras or Deductions	5 Total Value of Work Incorporated To-Date	6 Prudence Co., Inc. Appraisal	7 Total Cash Pa on Contracts per Receipts Submitted
1	Operation Costs Itemize under Remarks							
2	Plant Equipment Itemize under Remarks							
3	Excavation							
4	Shoring and Sheet Piling							
5	Foundations and Piers							
6	Waterproofing							
7	Steel Structure							
8	Orn. Iron and Bronze							
9	Brickwork Excluding Partitions See No. 25							
10	Plumbing							
11	Floor Arches							
12	Electric Work							
13	Granite							
14	Cut Stone, Facade							
15	Elevators							
16	Heating							
17	Carpentry—Rough Separate from Finished Carpentry							
18	Hardware—Rough							
19	Wood Win. Frames and Sash							
20	Met. Win. Frames and Sash							
21	Glass and Glazing							
22	Sheet Met. and Skylights							
23	Roofing							
24	Cin. Fill and Cem. Finish							
25	Partitions Keep separate from Brickwork							
26	Dumbwaiters							
27	Metal Lath and Furring							
28	Plastering							
29	Ventilation							
30	Carpentry Finish							
31	Kal. Doors and Trim							
32	Hol. Met. Doors and Trim							
33	Finished Hardware							
34	Interior Marble							
35	Tile Work Halls and Bathrooms							
36	Terrazzo							
37	Mail Chute and Box							
38	Weather Strips							
39	Painting and Paint Finish							
40	Wood Floors							
41	Bath Room Accessories Itemize under Remarks							
42	Electric Fixtures							
43	Kitchen Equipment Itemize under Remarks							
44	Furnishings Itemize under Remarks							
45	Refrigerating Plant							
46	Revolving Doors							
47	Laundry Equipment							
48								
49								
50								
51								

On October 3rd, 1930, the Bureau of Buildings of the Borough of Manhattan, City of New York, issued to the Central Park Properties, Inc., the usual Certificate of Completion #16873 (which is being delivered to you herewith) and we respectfully apply for the final payment due us amounting to $820,000 in accordance with agreement with you.

Very truly yours,

CENTRAL PARK PROPERTIES, INC.

By: LOUIS HAAS
Treasurer.

Plaintiff's Exhibit 37.

OAN

Date—October 6/30

CERTIFICATE OF ARCHITECT

THIS IS TO CERTIFY that .....

.....

has substantially completed miscellaneous construction work in connection with the construction of .....

at, ... amounting to ..... for labor and materials actually incorporated in said building.

.....

Architect.

IMPORTANT

The Architect's certificate and the affidavit must be signed and acknowledged before advances can be made.

STATE OF
COUNTY OF } ss.:

..... being duly sworn, deposes and says that he is ..... of ..... the owner of ..... building in course of construction at ..... that the estimated cost of all contracts heretofore let and to be let are shown in the statement herein below set forth; that said contracts are all the contracts necessary for the completion of said building, in accordance with plans and specifications heretofore submitted to The Prudence Company, Inc., and that said amounts here below set forth are correct. Said deponent is fully informed of said facts and makes this affidavit for the purpose of inducing The Prudence Company, Inc., to make payments from time to time on account of a loan to said owner, covering said building, to be used for paying for labor, work and material, in accordance with the various contracts and sub-contracts for the erection of said building.

Sworn to before me this ..... day of ....., 19...

.....

2 Estimated Sub-Contracts To Be Let	3 Sub-Contracts Let Exclusive of Extras	4 Extras or Deductions	5 Total Value of Work Incorporated To-Date	6 Prudence Co., Inc. Appraisal	7 Total Cash Paid on Contracts per Receipts Submitted	8 Amounts Now Due Sub-Contractors	Remarks
							Owners Total Cost as of Sept. 22, 1930
							3,692,118.13
							375,000.—
							83,369.43
							4,150,487.56 Total
							3,456,925.52
							693,562.04 Increase in work.

On October 3rd, 1930, the Bureau of Buildings of the Borough of Manhattan, City of New York, issued to the Central Park Properties, Inc., the usual Certificate of Completion #16873 (which is being delivered to you herewith) and we respectfully apply for the final payment due us amounting to $820,000 in accordance with agreement with you.

Very truly yours,

CENTRAL PARK PROPERTIES, INC.

By: LOUIS HAAS
Treasurer.

Plaintiff's Exhibit 38.

(Requisitions similar in form to Exhibits 33, 35 and 37; formal portions have not been printed for this record, but originals may be submitted to Court by either party, if so advised, pursuant to stipulation.) 2131

REQUISITION FOR ADVANCE ON BUILDING LOAN

LOCATION—155-165 W. 58th St. & 160-170 W. 59th Street,
BORROWER—Central Park Properties, Inc.
Requisition No. 13

October 13th, 1930

We respectfully apply for balance $670,000.00 of final payment on the amount of $820,000.00 due on presentation of Certificate of Occupancy, which Certificate was delivered to you on October 6th, 1930.

Very truly yours, 2132

CENTRAL PARK PROPERTIES, INC.
By: Louis Haas,
Treasurer.

REQUISITION FOR ADVANCE ON BUILDING LOAN

LOCATION—155-65 W. 58th St. & 160-70 W. 59th St.
BORROWER—Central Park Properties, Inc.
Requisition No. 14

October 20th, 1930.

We respectfully apply for balance $570,000.00 of final payment on the amount of $820,000.00 due on presentation of Certificate of Occupancy, which certificate was delivered to you on October 6th, 1930.

Very truly yours,

CENTRAL PARK PROPERTIES, INC.
By: 2133
Treasurer.

REQUISITION FOR ADVANCE ON BUILDING LOAN

LOCATION—155-65 W. 58th St. & 160-70 W. 59th St.
BORROWER—Central Park Properties, Inc.
Requisition No. 15

November 3, 1930

We respectfully apply for balance $570,000.00 of final payment on the amount of $820,000.00 due on presentation of Certificate of Occupancy, which certificate was delivered to you on October 6th, 1930.

Very truly yours,

CENTRAL PARK PROPERTIES, INC.
By: Louis Haas
Treasurer.

Plaintiff's Exhibit 39.

2134 Form—244-1931 Certificate of Occupancy. 8A-2087-31-C.P.

BUREAU OF BUILDINGS

BOROUGH OF MANHATTAN, CITY OF NEW YORK

CERTIFICATE OF OCCUPANCY No. 16873 1930

hvc

Supersedes Certificate of Occupancy No.

New York Oct. 3, 1930

To the owner or owners of the building:

THIS CERTIFIES that the building located on Block 1011, Lot 5 known as 153-67 West 58th Street—158-72 Central Park South 206′ 4″ front
2135 under a permit, Application No. 397 N.B. of 1929, conforms to the approved plans and specifications accompanying said permit and any approved amendments thereto, and to the requirements of the building code and all other laws and ordinances and to the rules and regulations of the board of standards and appeals, applicable to a building of its class and kind, except that in the case of a building heretofore existing and for which no previous certificate of occupancy has been issued and which has not been altered or converted since March 14, 1916, to a use that changed
2136 its classification as defined in the building code, this certificate confirms and continues the existing uses to which the building has been put; and

CERTIFIES FURTHER that the building is of fireproof construction within the meaning of the building code and may be used and occupied as a business and residence building as hereinafter qualified, in a business and residence district under the building zone resolution, subject to all the priveleges, requirements, limitations and con-

ditions prescribed by law or as hereinafter specified. 2137

Story	Live Loads Lbs.perSq.Ft.	Persons Accommodated Male	Female	Total	Use
Cellar					Storage
1st Story	120-40			150	Stores and Hotel
2nd to 7th Story	40 on each			125. on each	
8th to 10th Story	40 on each			117 on each	
11th & 12th Story	40 on each			58 on each	
					Hotel
13th to 16th Story	40 on each			42 on each	
17th to 36th Story	40 on each			40 on each	
37th Story	40			35	
38th to 40th Story	40 on each			15 on each	
Tower					Machine rooms

2138

This certificate is issued to Central Park Properties, Inc., 1359 Broadway, New York City, for the owner or owners.

(Page 1)

COPY

The superimposed, uniformly distributed loads, or their equivalent concentrated loads in any story shall not exceed the live loads specified above; the number of persons of either sex in any story shall not exceed that specified when sex is indicated, nor shall the aggregate number of persons in any story exceed the specified total; and the use to which any story may be put shall be restricted to that fixed by this certificate except as specifically stated. 2139

The building or any part thereof shall not be used for any purpose other than that for which it is certified.

Unless specifically stated above, the building or any part thereof, if certified as a public building,

2140 shall not be used as a building in which persons are harbored to receive medical, charitable or other care or treatment, such as a hospital, asylum, etc., or in which persons are held or detained under legal restraint, such as a police station, jail, etc.; nor shall it be used as a motion picture theatre as defined in section 30, chapter 3, Code of Ordinances; nor as a theatre or opera house or other building intended to be used for theatrical or operatic purposes, or for public entertainment of any kind, for the accommodation of more than 300 persons.

2141 Unless specifically stated above, the building or any part thereof, if certified as a residence building, shall not be used as a tenement house as defined in the tenement house law; nor shall it be used as any form of residence building having more than 15 sleeping rooms; nor shall it be used as a lodging house within the meaning of Sec. 1305 of the Greater New York Charter.

2142 Unless specifically stated above, the building or any part thereof, if certified as a business building, shall not be used as a garage, motor vehicle repair shop or oil selling station as defined in section 1, chapter 10, Code of Ordinances; nor shall it be used for the generation or compression of acetylene; nor as a factory building as defined in the labor law; nor as a grain elevator; nor as a coal pocket.

Except as otherwise noted above, the building, or any part thereof, if located elsewhere than in an unrestricted district, shall not be used for any of the purposes enumerated in paragraph (a) of section 4 of the building zone resolution; nor for any trade, industry or use that is noxious or offensive by reason of the emission of odor, dust,

smoke, gas or noise; nor for any kind of manufacturing not already prohibited, except that, if located in a business district, not more than twenty-five per cent. of the total floor space may be so used, or space equal to the area of the lot in any case. 2143

Except as otherwise noted above, the building, if certified as a garage, may not be used for more than five cars on any portion of a street between two intersecting streets, in which portion there exists an exit from or an entrance to a public school, or in which portion there exists any hospital maintained as a charitable institution; and in no case within a distance of 200 feet from the nearest exit from or entrance to a public school; nor within two hundred feet of any hospital maintained as a charitable institution. 2144

If the building has, at any time previous to the issuance of this certificate, been the subject of an appeal to the board of appeals or of a petition to the board of standards and appeals resulting in modification or variation of law or any lawful requirement, the construction and arrangement of the building as specified in the resolution granting such modification or variation, must be maintained, and all conditions imposed by either board must be observed. 2145

No change or re-arrangement in the structural parts of the building, or affecting the lighting or ventilation of any part thereof, or in the exit facilities, shall be made; no enlargement, whether by extending on any side or by increasing in height shall be made; nor shall the building be moved from one location or position to another; nor shall there be any reduction or diminution of the area of the lot or plot on which the building is located,

2146 until an approval of the same has been obtained from the superintendent of buildings.

This certificate supersedes each and every previously issued certificate of occupancy for this building or any part thereof, and each and every such previously issued certificate shall be null and void; and this certificate in turn becomes null and void upon the issuance of any new lawful certificate.

This certificate does not in any way relieve the owner or owners, or any other person or persons in possession or control of the building, or any part thereof, from obtaining such other permits
2147 or licenses as may be prescribed by law for the uses or purposes for which the building is designed or intended; nor from complying with any lawful order issued with the object of maintaining the building in a safe or lawful condition; nor from complying with any authorized direction to remove encroachments into a public highway or other public place, whether attached to or part of the building or not.

This certificate does not authorize the use or operation of any elevator in the building without the special certificate required by section 563 of the building code.

2148 If the building is or is required to be equipped with standpipes or other fire extinguishing or gas shut off appliances, this certificate is not complete until such standpipes or other appliances have been inspected by the fire department (or by the Tenement House Department in the case of a gas shut off in a tenement house) and approved in

writing, either in a separate certificate or by endorsement upon this certificate. (Space for such endorsement is provided on page 4 of this certificate.) 2149

If this certificate is marked "Temporary," it is applicable only to those parts of the building indicated on its face, and certifies to the legal use and occupancy of only such parts of the building; it is subject to all the provisions and conditions applying to a final or permanent certificate; it is not applicable to a tenement house unless also approved by the tenement house commissioner; and it must be replaced by a full certificate as soon as the entire building is completed according to law and ready for occupancy. 2150

The word "class" as used in this certificate refers to the classification of buildings in the building code (section 70).

This certificate is issued in accordance with the provisions of section 411-a of the Greater New York Charter and of section 5 of chapter 5 (Building Code) of the Code of Ordinances of the City of New York.

Examined.

CB

CHARLES BRADY 2151
Superintendent of Buildings,
Borough of Manhattan.

NK

Additional copies of this certificate will be issued, upon written request, to persons having a proprietary interest in the building.

Plaintiff's Exhibit 40.

2152

[Letterhead of A. E. Lefcourt Realty Holdings.]

November 1st, 1930.

Prudence Co. Inc.,
162 Remsen Street,
Brooklyn, N. Y.

Gentlemen:—

We herewith again enclose requests calling for full balance due us in accordance with the agreement between us.

2153

Very truly yours,

Central Park Properties, Inc.

By: Melvin Brown
Vice President & Comptroller

MB:AL

2154

Plaintiff's Exhibit 41.

[Letterhead of Fidelity and Deposit Company of Maryland] 2155

November 17th, 1930

The Prudence Company, Inc.
162 Remsen Street
Brooklyn, New York

Re: #526651—A.B.C.—Central Park Properties, Inc.
#3679515—Central Park Properties, Inc.

Attention: Mr. Braslin 2156

Dear Sir:

Will you please advise us regarding the status of the above captioned case? The writer recalls that on June 11th, you informed us that the contract was at that time over 50% complete and progressing to your entire satisfaction.

We would like to check up on the status of the work at the present time and would appreciate a word of advice from you.

Very truly yours,

Allan Major Race 2157
Allan Major Race, Mgr.
Contract Department.

AMR:EM

Plaintiff's Exhibit 42.

2158 [Letterhead of American Bonding Company of Baltimore]

November 21st, 1930

Mr. Braislin, Vice-President
The Prudence Company
162 Remsen Street
Brooklyn, New York

Re: #526651—Central Park Properties Inc. —guar. completion of modern 40 story basement fireproof hotel etc. located at 140-172 Central Park South and 151-157 W. 58th
2159 Street, New York City

Dear Sir:

Following our telephone conversation with you of the other day, we would be pleased to have you either send us a photostatic copy of the certificate of occupancy in connection with the above bond, or allow us to see it when we call at the office.

Will it be asking too much to ask you to let us know about this as soon as possible?

Very truly yours,

Allan Major Race

2160 Allan Major Race, Mgr.
AMR:EM Contract Department

Plaintiff's Exhibit 43.

November 24th, 1930. 2161

American Bonding Company,
16 Court Street,
Brooklyn, N. Y.

Attention: Mr. A. M. Race.

Gentlemen:—

In answer to your letter of November 21st relative to your bond #526651, Central Park Properties, Inc., we advise that any certificate of occupancy of the building has no connection with your bond. Whatever certificates have been issued are doubtless available at the office of the principal, Central Park Properties, Inc., and it is suggested that you address your inquiry to the principal on your bond. 2162

Very truly yours,

Vice-President and General Counsel.

M-F

THE PRUDENCE COMPANY, Inc. Memorandum
To Mr. Braislin From Mr. Mark

Date Nov. 24, 1930.

If you have anything to add to the enclosed letter relative to the bond on the Lefcourt job, please let me know; otherwise you may send out the letter. 2163

SM

I have no changes to suggest. Letter sent out 11/25/30.

HB

Plaintiff's Exhibit 44, consisting of 10 checks
2164 constituting the final advances of the loan, is omitted from the printed record, pursuant to stipulation and order (*supra,* p. 565) subject to the right of either party to submit the same to the Court if so advised.

Plaintiff's exhibits for identification numbered 45, 46, 47, 48, 49 and 50, consisting of reports and estimates by Mr. Billsborrow, were marked in evidence as Defendant's Exhibit B of May 8, 1934, and are printed at page 805, *infra.*

2165

Plaintiff's Exhibit 51.

December 17th, 1930.

Central Park Properties, Inc.,
160 West 59th Street,
New York City.

Gentlemen:—

Mortgage in the amount of $6,650,000 on premises on the south side of 59th Street east of Seventh Avenue, owned by you, was due and payable
2166 on December 16th, 1930 and payment thereof has not been made.

Unless payment is made immediately, we will be obliged to place this mortgage in the hands of counsel for foreclosure.

Very truly yours,

Vice-President.

M-F

Plaintiff's Exhibit 52.

CENTRAL PARK PROPERTIES, INC. acknowledges 2167
that it has received from THE PRUDENCE COMPANY, INC., the sum of THREE HUNDRED THOUSAND ($300,000) DOLLARS as an advance upon mortgages consolidated in lien and as consolidated comprising one lien for Six Million, Six hundred and fifty thousand ($6,650,000) Dollars covering premises on the south side of 59th Street, 100 feet east of Seventh Avenue, said premises being 206 ft. 4 in feet in width along 59th Street and extending through to the northerly side of 58th Street. The total amount advanced to date is SIX MILLION, SIX HUNDRED FIFTY THOUSAND ($6,650,000) DOLLARS and Central Park Properties, Inc. hereby certifies 2168
that the full amount of said mortgage has been advanced.

Dated New York, December 5th, 1930.

CENTRAL PARK PROPERTIES, INC.,
By: MELVIN BROWN
Vice Pres.
[SEAL]

STATE OF NEW YORK, County of New York, ss.:

On this 5th day of December, 1930, before me personally came to me known, 2169
who, being by me duly sworn did depose and say that he resides at that he is the of CENTRAL PARK PROPERTIES, INC., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Plaintiff's Exhibit 53.

2170 Mr. Braislin:

Re: Weekly Inspection Report on Lefcourt Central Park South Job, for week ending December 27th, 1930

Seven daily inspections were made by me including Sunday and Christmas Day.

There has been no construction work of any kind going on since December 23, 1930, except the testing of the gas refrigerators in the serving pantries, which is being done by three workmen.

One day and one night watchman has been on the premises continually. These men I understand
2171 are in the employ of the Prudence Company, but I am led to believe that they are and have been paid by the owner up to December 26th, 1930.

There are also four maintenance mechanics on the premises. These men are and have been paid by the owner up to December 27th, 1930.

The building has been continually heated, the steam being taken from the street main of the New York Steam Company. The plumbing system is in operation with water circulation through the piping.

On December 23rd, 1930 the painting contractor
2172 removed all his ladders, scaffolding, etc, also the material including large unopened cans of paint. I phoned this information to Mr. Billsborrow, in your absence, and was informed that it was O.K.

NEW YORK APPRAISAL DEPT.
By Peter A. Weller.

December 29th, 1930
L.

Plaintiff's Exhibit 54.

Mr. Braislin: 2173

Re: Weekly inspection report on Lefcourt Central Park South Job for week ending January 3rd, 1931.

Six daily inspections were made by me including Sunday.

Our watchman and the owner's maintenance mechanics have been on the premises.

The building has been continually heated and the plumbing system in operation, but on January 2nd a number of men from the Dahmstadt Plumbing Company started to drain the system and tanks and shut down on the steam. This work is 2174
being done under Mr. Billsborrow's supervision.

NEW YORK APPRAISAL DEPT.
By: Peter A. Weller

January 5, 1931
L.

Plaintiff's Exhibit 55.

January 6, 1931.

Mr. Charles C. Peters,
305 Broadway,
New York, N. Y. 2175

My dear Mr. Peters:

We are sending you herewith two copies of the agreement giving us possession of the Central Park Properties, Inc. building on Central Park South 100 feet east of 7th Avenue, New York.

If you will let me know as soon as these are signed, we will send over for them.

Yours truly,

G. S. BRAISLIN
Vice-President.

Plaintiff's Exhibit 56.

[Letterhead of Fidelity and Deposit Company of Maryland]

January 7th, 1931

Prudence Company, Inc.
331 Madison Avenue
New York City

Re: #526651—A.B.C.—#3679515—Central Park Properties—Guar. completion of modern 40-story & basement fireproof hotel etc. located at 140-172 Central Park South and 151-157 W. 58th Street, New
2177 York City

Attention: Mr. Braslin

Gentlemen:

You will perhaps recall a conversation with the writer some time ago regarding the condition of the contract covered by the above captioned bonds. At that time, you could not advise us of the status of the contract, saying that there were a few small things not yet done. It is probable, since two or three months have elapsed, that the contract has been actually completed and, if so, we would ap-
2178 preciate your advices on the subject.

Very truly yours,

Allan Major Race
Allan Major Race, Mgr.
Contract Department.

AMR:EM

Plaintiff's Exhibit 57.

Registered

2179

January 13, 1930.

Fidelity & Deposit Company of Maryland,
55 Liberty Street,
New York City.
American Bonding Company of Baltimore,
16 Court Street,
Brooklyn, N. Y.

Re: Your Bond #526651, Central Park Properties, Inc., Fidelity & Deposit Company of Maryland and American Bonding Company of Baltimore to The Prudence Company, Inc., premises south side of 59th Street 100 feet east of Seventh Avenue, Borough of Manhattan New York City.

2180

Gentlemen:

We hereby give you notice that a Conditional Bill of Sale in the sum of $215,000. made by Central Park Properties, Inc. to Otis Elevator Company, dated December 20th, 1929 was filed in the office of the Clerk of the County of New York on December 31st, 1930 under the number 75401.

In accordance with your said Bond, dated the 25th day of September, 1929, we demand that within thirty days immediately following your receipt of this notice you cause the foregoing to be paid and/or released and cancelled of record to the satisfaction of our counsel.

2181

Very truly yours,

G. S. Braislin
Vice-President

AJ:DB

[Registered receipts of letter of January 13, 1930 to American Bonding Company of Baltimore and Fidelity & Deposit Company of Maryland were attached to this Exhibit.]

Plaintiff's Exhibit 58.

2182 [Letterhead of Fidelity and Deposit Company of Maryland]

January 16, 1931.

The Prudence Company, Inc.,
162 Remsen Street,
Brooklyn, N. Y.

Attention: Mr. G. J. Braislin, Vice-President.
Re: Bond No. 526651—Central Park Properties, Inc.—The Prudence Co. Inc.

Dear Sirs:

2183 We have received your letter of January 13th in reference to the above bond, and the subject therein referred to will receive our immediate attention.

Very truly yours,

Wallace P. Harvey, Esq.
Wallace P. Harvey
General Counsel & Vice-President.

WPH:AER

2184

Plaintiff's Exhibit 59.

2185

[Letterhead of American Bonding Company of Baltimore]

January 16, 1931.

The Prudence Company, Inc.,
162 Remsen Street,
Brooklyn, N. Y.

Attention: Mr. G. J. Braislin, Vice-President.
Re: Bond No. 526651—Central Park Properties, Inc.—The Prudence Co. Inc.

Dear Sirs:

2186

We have received your letter of January 13th in reference to the above bond, and the subject therein referred to will receive our immediate attention.

Very truly yours,

Wallace P. Harvey, Esq.
Wallace P. Harvey
General Counsel & Vice-President.

WPH:AER

2187

Plaintiff's Exhibit 60.

2188

February 14th, 1931.

Fidelity & Deposit Company of Maryland,
55 Liberty Street,
New York City.
American Bonding Company of Baltimore,
16 Court Street,
Brooklyn, New York.
Central Park Properties, Inc.,
1359 Broadway,
New York City.

2189

Re: Bond #526651, Central Park Properties, Inc., Fidelity & Deposit Company of Maryland & American Bonding Company of Baltimore to The Prudence Company, Inc., premises south side of 59th Street 100′ east of Seventh Ave., Borough of Manhattan, New York City.

Gentlemen:

We hereby notify you that the work on the building on the S/S of Central Park South, 100′ E. of 7th Avenue, running through to West 58th Street, New York, has not been done as required
2190 by the Surety Bond, the Building Loan Agreement and the Plans and Specifications affecting this property, and that there is still a considerable amount of work to be done.

We are having a survey made which will show the exact items still to be completed in this build-

ing, and will forward a copy of this to you as soon as it is received by us. 2191

Very truly yours,

G. S. BRAISLIN
Vice President.

GSB:ech

[Registered receipts of letter of February 14, 1931, to Fidelity & Deposit Company of Maryland, American Bonding Company of Baltimore and Central Park Properties, Inc., were attached to this Exhibit.]

Plaintiff's Exhibit 61.

[LETTERHEAD OF AMERICAN BONDING COMPANY OF BALTIMORE] 2192

February 16th, 1931.

Re: #526651—Central Park Properties, Inc. COMPLETION BOND guaranteeing completion of modern forty story and basement fireproof Hotel, etc. located at 140-172 Central Park South and 151-157 W. 58th St., New York City.

Mr. G. S. Braislin, Vice-President
The Prudence Company, Inc.
162 Remsen Street 2193
Brooklyn, N. Y.

Dear Sir:—

We have received your letter of February 14th. in connection with the above captioned bond and have referred it to the Legal Department of the Fidelity and Deposit Company of Maryland, 55 Liberty Street, New York City, to whom we would request that you refer all subsequent correspondence on this matter.

Very truly yours,

ALLAN MAJOR RACE
ALLAN MAJOR RACE, Manager
Contract Department

AMR:C

Plaintiff's Exhibit 62.

2194 REGISTERED.

February 25, 1931.

Fidelity & Deposit Company of Maryland,
55 Liberty Street,
New York City.
American Bonding Company of Baltimore,
16 Court Street,
Brooklyn, New York.
Central Park Properties, Inc.,
1359 Broadway,
New York City.

2195 RE: Bond #526651, Central Park Properties, Inc., Fidelity & Deposit Company of Maryland & American Bonding Company of Baltimore to The Prudence Company, Inc., premises south side of 59th Street 100' east of Seventh Ave., Borough of Manhattan, New York City.

Gentlemen:

In accordance with our letter of the 14th inst., we beg to advise that the following is a schedule of the work remaining to be completed in and on the
2196 building located on the south side of 59th Street, 100 feet east of 7th Avenue, New York City, covered by your said bond:

1. WATERPROOFING:

All waterproofing is to be completed, particularly the installation of a membrane waterproofing in the incinerator room and elevator pits.

2. ORNAMENTAL IRON & BRONZE: 2197

All ornamental iron and bronze work is to be completed. There is a grill missing in the vestibule on the first floor, and there are two transoms over store doors on the 58th Street side still to be put in. The bronze screen doors opening into the dining room and lobby, etc. are not properly adjusted, and this should be done.

3. MASONRY:

The masonry work is still incomplete, and the terra cotta copings are incomplete on the offset roof. 2198

4. PLUMBING:

All plumbing work should be completed. There are no shower curtains in the building, and there are still several fittings such as soap dishes, valves, etc., which have not yet been installed. There are several plumbing fixtures which were damaged and should be replaced.

5. ELECTRIC WORK:

The electric work is still incomplete. There are many receptacles, switches, plates and fixtures still to be installed, and the lighting, fire alarm systems, etc. have not yet been tested. 2199

6. ELEVATORS:

All elevator work is to be completed so that the elevators are in running order and entirely completed.

2200 7. SHOWER DOORS:

There are several pieces of moulding in connection with the shower doors which have not yet been installed.

8. METAL WINDOWS:

The installation of metal windows is incomplete where two double hung windows are adjoining each other, no caulking of any kind has been put in the joints. Glazing beads will have to be replaced where necessary. Some of the hardware on the casement doors leading to offset roofs, and on
2201 the windows are missing and will have to be put in.

9. GLASS:

All broken glass and all missing glass throughout the building should be replaced and installed. There are still several mirrors in the mirror doors missing, and also several defective mirrors in mirror doors should be supplied with perfect mirrors.

10. SHEET METAL WORK & ROOFING:

2202 All roofing work is to be entirely completed and all work previously done is to be gone over carefully for leaks. Louvres should be installed in the top of the incinerator flue. Some roofing on offset at the second floor level on the east side should be completed. There is also an opening between the new and the adjoining building from the second to the twelfth floor which should be flashed.

11. CEMENT WORK:

2203

All cement work is to be finished. No cement floor or base has yet been installed in the east store on 58th Street. This work should be done. No carpet stripping has been installed in any part of the building. Carpet stripping should be installed in all rooms and places where carpet is to be used.

12. CABINET WORK IN LOBBY:

The cabinet work in the lobby was never finished in that it was never waxed and rubbed down. For this reason, moisture got into the wood and several pieces have warped so badly that they will need repairs.

2204

13. DOORS:

All doors are to be completed throughout the building. There are some double acting doors to be hung in the duplex apartments, and there are some imperfect and damaged doors on the lower floors which will have to be replaced. The final adjustments on all doors have never been made.

14. PLASTERING:

2205

All plastering is to be finished. There is still a good deal of plaster patching to be done throughout the building, and there is still plaster work to be finished in the stores.

15. CARPENTRY FINISH:

All carpentry work is to be finished. In some of the rooms the panel moulding has not been finished, or has been so badly damaged in being put up that it will have to be replaced.

2206 16. FINISHED HARDWARE:

All hardware is to be finished and all locks are to be completed throughout the building, and furnished with keys. There are some lock sets still to be installed in the duplex apartments. The keys to all locks should be sorted out on a suitable key board, and there should be master keys for the respective floors, service portions, etc. together with grand master key for the whole building. Also some of the closets have never received clothes hooks and poles.

2207 17. INTERIOR MARBLE:

The marble work in the lobby is still to be cleaned.

18. TILE WORK:

There is still some tile work to be done, such as patching around switch plates, etc. and the completion of the installation of tile accessories.

19. TERRAZZO:

2208 All of the terrazzo of the main lobby, etc., on the first floor has yet to receive its final rubbing and polishing.

20. APARTMENT ICE BOXES:

All the refrigerators will have to be put in perfect working condition and completely furnished with proper accessories.

21. PAINTING:

All painting work is to be finished. All apartment rooms are to receive three coats of stipple finish on walls. All elevator ves-

tibules are to receive three coats of stipple finish also. All cement stair landings and treads will have to be finished with two coats of cement paint; dado stripe on all stairs; exposed fascias and portions of elevator shafts to receive one coat of asphaltum; cellar work two coats; three coats of enamel finish on walls and ceiling of all baths, pantries, kitchens, doors, trim, windows, cement base, etc.; three coats in closets; kalsomine all ceilings except baths and pantries; all necessary signs required by law, floor numbers on all elevator and stair shafts; apartment numbers on all apartments; all service rooms to be suitably lettered. Deduct for work previously completed, for example the walls of most rooms have received two coats and at present they would have to be sparkled, then receive one coat of size and one coat of stipple finish. There is also a good deal of painting work and kalsomining work which has been poorly and unsatisfactorily done, such work will have to be redone. Parts of the main lobby etc. will have to be touched up and the cabinet wainscoting will have to be waxed and rubbed down. 2209 2210 2211

22. Wood Floors:

The wood floors in the duplex apartments, main dining room and smaller dining rooms have opened up in some cases and will have to be gone over and also receive their finish coat of varnish and be protected with paper. All wood floors are to be completed.

23. Lighting Fixtures:

All lighting fixtures are to be completed and all broken fixtures are to be replaced.

2212 24. MAIN KITCHEN EQUIPMENT & REFRIGERATING PLANT:

The main kitchen equipment and the refrigerating plant are to be entirely completed, and the refrigerating plant put in running order.

25. MEDICINE CABINETS:

All missing medicine cabinets are to be installed, and all damaged boxes, mirrors and missing glass shelves are to be supplied and replaced.

2213 26. KITCHEN CABINETS:

All kitchen cabinet work is to be completed. There are some drain boards missing and closure pieces on top of hanging closets are to be installed.

27. MISCELLANEOUS:

All the necessary cleaning and removal of rubbish should be done. The steam, water and drainage systems should be tested for leaks.

2214 The foregoing specification represents all of the unfinished items which have come to our attention up to the present time, but if further inspection discloses additional uncompleted work we shall of course promptly advise you thereof.

Please make the necessary arrangements to have all of this work promptly completed, taking special care to have the work of the high grade and quality required on this job.

Plaintiff's Exhibit 66

Our engineering department will be glad to confer with you at any time in connection with your execution of such work. 2215

Very truly yours,

G. S. BRAISLIN
Vice-President.

G/N

Plaintiff's exhibits for identification numbered 63, 64 and 65, consisting of reports and estimates by Mr. Billsborrow, were marked in evidence as Defendant's Exhibit B of May 8, 1934, and are printed at pages 819 *et seq.* 2216

Plaintiff's Exhibit 66.

[LETTERHEAD OF THE PRUDENCE COMPANY, INC.]

March 31st, 1931.

Fidelity & Deposit Company of Maryland,
55 Liberty Street,
New York City.

Attention: Legal Department.

American Bonding Company of Baltimore, 2217
16 Court Street,
Brooklyn, New York.

Attention: Mr. Allan Major Race, Manager
Contract Department.

RE: Bond #526651, Central Park Properties, Inc., Fidelity & Deposit Company of Maryland & American Bonding Company of Baltimore to The Prudence Company, Inc., premises

Plaintiff's Exhibit 66

2218 south side of 59th Street, 100'E. of Seventh Avenue, Borough of Manhattan, New York City.

Gentlemen:

Bing and Bing, Inc. is starting a survey to determine the exact amount of work still to be done in the above building. This survey will start tomorrow morning, April 1st, 1931. We should be glad if you would have one of your representatives at the building beginning tomorrow, so that he can check this survey as it goes along, and so that you can make any survey of your own which
2219 you may desire. Mr. Lukach, of Bing and Bing, Inc., is in charge of this survey.

Very truly yours,

G. S. Braislin
Vice President.

Original of the above letter received March 31st, 1931.

American Bonding Company of Baltimore
By Allan Major Race

2220

Plaintiff's Exhibit 67.

REGISTERED 2221

April 11th, 1931.

Fidelity & Deposit Company of Maryland,
55 Liberty Street,
New York.
American Bonding Company of Baltimore,
16 Court Street,
Brooklyn, New York.
Central Park Properties, Inc.,
1359 Broadway,
New York City.

RE: Bond #526651, Central Park Properties, Inc., Fidelity & Deposit Company of Maryland & American Bonding Company of Baltimore to The Prudence Company, Inc., premises south side of 59th Street 100′ east of Seventh Av., Borough of Manhattan, New York City. 2222

Gentlemen:

We have not received any reply from you to our letters of February 14th and 25th, 1931, notifying you of work to be performed and materials to be furnished so as to complete the building on the above described property and demanding that you complete the building accordingly. 2223

By reason of your failure to reply to our letters or go ahead with the work although more than six weeks have elapsed since our notice of February 25, 1931, we assume that you have decided not to proceed with the work. Therefore, we are writing this letter to advise you that in accordance with the terms of your said bond, we

Plaintiff's Exhibit 67

2224 shall proceed with the work and complete the building, and in due course make claim upon you to reimburse us for all of our costs, expenses and charges in connection therewith, and interest. We have engaged Bing and Bing, Inc, to superintend the completion of the building. Please advise if you wish to have a representative present during the progress of the work.

Very truly yours,

G. S. Braislin
Vice President.

2225 [Registered receipts of letter of April 11th, 1931, to Central Park Properties, Inc. and Fidelity & Deposit Company of Maryland were attached to this Exhibit.]

2226

Plaintiff's Exhibit 68.

[Letterhead of Fidelity and Deposit Company of Maryland] 2227

June 10, 1931.

The Prudence Company, Inc.
331 Madison Ave. at 43rd St.
New York City

Re: Central Park Properties, Inc.

Gentlemen:

We acknowledge receipt of your letter of June 9th, 1931, enclosing itemized estimate of the work to be performed and materials to be furnished, 2228 which you say are necessary to complete the building at 59th Street and Seventh Avenue, formerly known as Seville Towers and now known as Essex House.

Yours very truly,

Albert E Hart
Albert E. Hart
Attorney

AEH:LW

Plaintiff's Exhibit 69, a letter from American Bonding Company to The Prudence Company, Inc., dated June 10, 1931, and identical with Exhibit 68, is omitted from the printed record, pursuant to stipulation and order (*supra*, p. 565) subject to the right of either party to submit the same to the Court if so advised. 2229

Plaintiff's Exhibit 70.

2230 (Copy)

Registered

June 24, 1931.

Fidelity & Deposit Company of Maryland,
55 Liberty Street,
New York City.
American Bonding Company of Baltimore,
16 Court Street,
Brooklyn, New York.
Central Park Properties, Inc.,
1359 Broadway,
New York City.

2231

Re: Bond #526651, Central Park Properties, Inc., Fidelity & Deposit Company of Maryland and American Bonding Company of Baltimore to The Prudence Company., prem. south side of 59th Street 100' east of 7th Ave., Borough of Manhattan, New York City.

Gentlemen:

Supplementing our previous letters to you in the above matter dated February 14th and 25th,
2232 1931, April 11th, 1931 and June 9, 1931, we find that there are certain additional items to be included in our notice of claim and we shall furnish you with particulars in the very near future.

Very truly yours,

G. S. Braislin (Sgd.)
Vice-President.

Plaintiff's Exhibit 71.

(Copy) 2233

June 9, 1931.

Fidelity & Deposit Company of Maryland,
55 Liberty Street,
New York City.
American Bonding Company of Baltimore,
16 Court Street,
Brooklyn, New York.
Central Park Properties, Inc.,
1359 Broadway,
New York City.

Re: Bond #526651, Central Park Properties, Inc., Fidelity & Deposit Company of Maryland and American Bonding Company of Baltimore to The Prudence Company, Inc., prem. south side of 59th Street 100' east of 7th Ave., Borough of Manhattan, New York City. 2234

Gentlemen:

Supplementing our letters to you of February 14th and 25th, 1931, and April 11th, 1931, we enclose herewith itemized estimate of work to be performed and materials to be furnished, with the estimated cost thereof, to complete the construction of the building known as Essex House, located on the south side of 59th Street, 100 feet east of Seventh Avenue, New York City, covered by your said bond. The estimated cost as shown by the statement is the sum of $279,595.01. As we advised in our letter of April 11th, Bing & Bing, Inc., are superintending this work of completion. 2235

It will be necessary for us to cause other work to be done in completing the building, resulting

2236 in certain changes from the original plans and specifications, but the cost of that work is not included in the within itemized estimate. Such additional work may be fairly considered as contemplated by the provisions of paragraph "Fifth" of your bond, but we have not yet estimated its cost.

Among other things your bond provided that the building should be completed not later than the 16th day of December, 1930, and by reason of the fact that it was not completed at that time, we have sustained further substantial loss and damage, the amount of which has not yet been
2237 computed.

We shall advise you as soon as we have calculated the amount of such additional cost, loss and damage.

We are delivering a copy of the within estimate to Keeler, Inc., of 420 Lexington Avenue, pursuant to your instructions.

Please acknowledge receipt of this letter, and oblige,

Very truly yours,

G. S. Braislin
Vice-President.

2238

Blue Prints		$300.00
Carpentry		
Kellastone carpet strips	$8,450.00	
Labor for installing missing picture moulding, base moulding, shelving, door bumpers, hooks, etc.	1,325.60	
Material for above	200.00	
	$9,975.60	9,975.60
Cement Work		
Labor for patching floors, base, steps etc. where omitted or broken	450.00	
Material for above	75.00	
	$525.00	525.00

Electric			2239
Charts in each panel box	300.00		
Fuses, missing plates, inspection etc.	750.00		
Fire alarm system, cards, frames, recording, etc.	300.00		
Fountain reflectors	50.00		
Unfinished work in barber shop	250.00		
	$1,650.00	1,650.00	
Elevators			
Finishing contract	$14,500.00		
Removing equipment to waterproof pits	380.00		
	$14,880.00	14,880.00	
Fireproof Windows			
Missing stools and trim	1,700.00		
Weatherstripping	1,575.00		
Repairing casement windows	250.00		2240
	$3,525.00	3,525.00	
Fireproof Doors and Bucks			
Repairing and supplying missing bucks and doors	1,300.00		
Elevator door stops	518.00		
New doors and bucks in duplex apartments	115.00		
Copper doors for exterior openings	480.00		
Glazing beads	75.00		
	$2,488.00	2,488.00	
Fireproof Arches			
Fireproofing steel in bulkhead	$100.00		
Fireproofing steel in plenum chamber	700.00		
Fireproofing steel in 20th floor elevator machine room	100.00		
	$900.00	$900.00	2241
General Equipment			
Lockers—Mezzanine		600.00	
Glass			
Breakage	341.56		
Missing mirrors	880.00		
Glass in doors	160.00		
	1,381.56	1,381.56	

NOTE: Plate glass in bronze 1st floor grilles included in bronze work.

2242 *Hardware*

For making master keying system for entire building	1,200.00	
Missing hardware	390.00	
Missing coat hooks	150.00	
	1,740.00	1,740.00

Iron (Ornamental)

Vault door	300.00	
Access doors	255.00	
Coat bars	50.00	
Service entrance gate	600.00	
Incinerator room platform, railings, etc.	300.00	
Missing ladders, etc.	75.00	
	$1,580.00	1,580.00

Lighting Fixtures

2243 Missing fixtures in the following locations:

Bathrooms	80.25	
Living rooms and chambers	542.00	
Corridors and halls	106.50	
First floor	850.00	
	$1,578.75	1,578.75

Marble

First floor—marble to be installed instead of terrazzo	3,889.50	
Missing saddles	52.50	
	$3,942.00	3,942.00

Masonry

Parging bulkhead roof	$60.00	
Pointing up of brickwork	160.00	
Missing terra cotta caps	125.00	
2244 Columns not fireproofed	600.00	
Bulkheads in stores	60.00	
Uncompleted masonry in barber shop	200.00	
Pointing of west wall of Hotel Meurice	750.00	
	$1,955.00	$1,955.00

Miscellaneous

Cleaning—Windows	925.00	
Toilets	300.00	
Rubbish—stores 1st floor, etc.	500.00	
	$1,725.00	1,725.00

Dampproofing and Waterproofing			2245
Window caulking	875.00		
Elevator pits	225.00		
Waterproofing under main house tank, 2nd bulkhead	250.00		
Spandrel leaks	400.00		
	$1,750.00	1,750.00	
Electric Current			
6 months at $700.00 per month		4,200.00	
Incinerator			
Insulating ceiling of incinerator room	400.00		
Insulating of incinerator breeching	200.00		
Tools	125.00		
Trolley beam and block	175.00		
	$900.00	900.00	
Kitchen Equipment			2246
Missing parts, adjusting, etc.		500.00	
Mail Chute			
Amount due Cutler Mail Chute Company required before opening chute		4,000.00	
Medicine Cabinets			
Missing shelves, mirrors, broken doors, etc.		115.00	
Soundproofing			
Elevator machine room—21st floor		400.00	
Telephone			
Office telephones—6 mos. at $80.00 per Mo.	480.00		
Switchboard rental 6 mos. at $274.00 per month	1,644.00		2247
	$2,124.00	2,124.00	
Wire Guard			
Machinery in basement		$400.00	
Cork Floors			
40th floor hall		275.00	
Painting		90,800.00	
Plant Ventilation			
Two additional sections for air filter and charging and cleaning tanks	$100.00		
Minor parts, adjusting, etc.	200.00		
	$300.00	300.00	

2248 *Refrigeration*

(Cork covering	200.00	
(Adjusting, etc.	200.00	
Ammonia (Gas mask & cabinet	60.00	
Machine (Missing parts	100.00	
Electrolux—missing parts	400.00	
	$960.00	960.00

Plastering

Patching	3,500.00	
Uncompleted barber shop	750.00	
	$4,250.00	4,250.00

Plumbing

Replacing missing fittings, defective fixtures, seats, etc.	$1,000.00	
Shower Curtains	1,374.00	
2249 House tank discharge line	50.00	
Gas shut off valve	150.00	
Pressure guages—water meter	50.00	
Check valve—water meter	125.00	
Guages—discharge of house pump	100.00	
Liquid soap dispenser	300.00	
Armored hose for ice tank	34.85	
Installing soap dishes	150.00	
Fire extinguishers	300.00	
Two Siamese connections	100.00	
Five lavatories omitted in barber shop	625.00	
Drain in incinerator room	150.00	
Valve charts	300.00	
	$4,818.85	$4,818.85

Roofing

Felt and pitch omitted	500.00	
Patching	125.00	
2250	$625.00	625.00

Steamfitting

Radiators omitted in stores	700.00	
Missing equipment, etc.	45.25	
Valve charts and brass tags	375.00	
One year's supply of guage charts	25.00	
Insulating ceiling of steam room	400.00	
Radiators in interior bathrooms	25,000.00	
Patching and cutting for above	17,000.00	
Rubbish chute	4,500.00	
	$48,045.25	$48,045.25

Stone (Cleaning)	2,000.00
Terra Cotta—Missing pieces	75.00

Tiling			2251
Barber shop (floor and wall)	$7,327.00		
Patching	50.00		
Accessories (Combination soap, glass and tooth brush holders)	1,030.00		
Accessories (servants rooms)	136.50		
Miscellaneous accessories	50.00		
	$8,593.50	8,593.50	
Kitchen Cabinets			
Missing equipment, repairing existing equipment, etc.		350.00	
Bronze Work			
Missing bronze grilles, screens and plate glass for same on 1st floor	3,620.00		
Repairing existing work	110.00		
	$3,730.00	3,730.00	2252
Terrazzo			
Polishing first floor terrazzo	1,053.78		
Patching	140.00		
	$1,193.78	1,193.78	
Cabinet Work			
Removing warped wainscot and replacing	400.00		
Work omitted in check room	150.00		
Racks and shelves in newstand	210.00		
Room clerks office—mail and key racks, shelving, etc.	430.00		
File racks and wood screens	320.00		
Telephone room—counter and 'phone booths	550.00		
Private dining rooms—wood folding doors	1,158.00		
	$3,218.00	3,218.00	2253
Wood Floors			
Refinishing wood floors on 1st floor and in duplex apartments		$400.00	
Salaries			
Project Manager, Construction Superintendent, Assistants, laborers, Watchmen, Engineers, Elevator Operators, porters, etc. for six months		21,408.00	
		$254,177.29	
Bing & Bing, Inc—Builders and Superintendence fee, 10%		25,417.72	
TOTAL		$279,595.01	

Plaintiff's Exhibit 72.

2254 (Copy)

July 6, 1931.

Fidelity & Deposit Company of Maryland,
55 Liberty Street,
New York City.
American Bonding Company of Baltimore,
16 Court Street,
Brooklyn, New York.
Central Park Properties, Inc.,
1359 Broadway,
New York City.

2255 Re: Bond #526651, Central Park Properties, Inc., Fidelity & Deposit Company of Maryland and American Bonding Company of Baltimore to The Prudence Company, Inc., prem. south side of 59th Street 100′ east of 7th Ave., Borough of Manhattan, New York City.

Gentlemen:

In accordance with our letter of the 24th ult., enclosed herewith please find schedule of further items aggregating in amount $138,043.77 to be added to our previous claim filed with you in the 2256 sum of $279,595.01, making a total claim of $417,638.78.

We are forwarding a copy of the within schedule to Keeler, Inc., of 420 Lexington Avenue.

Kindly acknowledge receipt of this letter and oblige,

Very truly yours,

G. S. Braislin
Vice-President.

Wood stools and aprons were omitted from 2,335 metal windows in rooms from 2nd to 40th floors, incl. which were specified on page 11, par. 39 of the Carpentry & Millwork specification.		2257
2,335 fireproofed wood stools & Aprons at $4.00 erected	$9,340.00	
Metal stools & aprons at $1.80 each, erected	4,203.00	
Difference	$5,137.00	
An allowance of $250. was made on page 9 of the Preliminary and Miscellaneous Work specification for each fireplace mantle for each living room from the 18th to 38th floors, incl, 144 in all, and $250. each for the four mantles on the 39th floor. All of these fireplace mantles were omitted making a saving of	$22,600.00	
Cement bases with wood cap moulding were substituted for the 6" one piece wood base specified on page 10, Par 33 of the Carpentry & Millwork Specification, and on the schedule of interior finish for 574 foyers, 444 living rooms, 681 bed rooms and 473 serving pantries from the 2nd to 40th floors, incl.		2258
6" cement base with wood moulding, per ft. 18¢		
6" one member fireproofed wood base, per ft. 35¢		
Estimated lineal feet, 78,388 at 17¢		
Difference	$13,325.96	
Paragraph 20 on page 10 of the Plastering specification and schedule sheet #14 calls for wainscot of Keene's cement 4' 6" high, in all service elevator vestibules and lobbies throughout the building.		
No Keene's cement wainscots were put in any of these spaces		
1222 yards at $4.77 (removing existing plaster and applying Keene's cement).....	5,828.94	2259
Ceilings of terraces on the 39th floor were left unfinished having only the scratch coat applied.....	160.00	
Teak and burl wall panelling was omitted from behind the desk space, cashier's space and news and ticket stand	2,940.00	
Four counter screens of burl and ebony were omitted from counters of desk space in main entrance lobby	300.00	
Copper Louvres and screens were omitted from the main stack on the main bulkhead roof	280.00	
Brick costing $33.00 per thousand was used instead of the $38.00 per M specified on page 3, par. 5 of the Masonry specification. 1,300,000 Continental Fiske brick used at $33.00 per thousand.		
Difference in cost	6,500.00	

2260 $50,000.00 allowance was made for lighting fixtures, installation, connection and inspection fees.

Allowance for lighting fixtures.....		$50,000	
Actually spent—Lightolier Company	$14,500		
Black & Boyd	8,600	23,100	
Difference			$26,900.00

Following allowances were made in the original specifications all of them in our opinion being in excess of the monies spent for the various items.

Hardware allowance		$50,000	
Contract-Rosenthal Hdw. Co.		20,500	
Difference			29,500.00
Medicine Cabinet Allowance		10,000	
Contract		5,930.56	
Difference			4,069.44

2261

Apartment Refrigerators allowance		70,000	
Electrolux Contract (Consolidated Gas Company)		62,047	
Difference			7,953.00
			$125,494.34
Bing & Bing, Inc. Builders & Superintendence Fee—10%			12,549.43
TOTAL			$138,043.77

The above item is in addition to the amount of $279,595.01 as listed in previous report.

June 30, 1931.

2262 [Registered receipts of letter of July 6, 1931, to Fidelity and Deposit Company of Maryland, and Central Park Properties, Inc., were attached to this Exhibit.]

Plaintiff's Exhibit 73.

[Letterhead of Fidelity and Deposit Company of Maryland] 2263

July 8, 1931

Registered Mail
Return Receipt Requested

The Prudence Company, Inc.
162 Remsen Street
Brooklyn, N. Y.

Attention: Mr. G. S. Braislen,
Vice-President

Re: Central Park Properties, Inc.

Gentlemen: 2264

I am in receipt of your letter of July 6th, wherein you advise us of an additional claim under the bond for the above named principal, in the sum of $138,043.77.

Kindly advise me why you advanced to the Central Park Properties, Inc. all but $75,000.00 on their building and loan agreement had with you, when you now claim there is still over $417,000.00 worth of work still to be done.

Yours very truly,

Albert E Hart 2265
Albert E. Hart
Attorney

AEH:LW

Plaintiff's Exhibit 74, letter from American Bonding Company to The Prudence Company, Inc., dated July 8, 1931, identical with Exhibit 73, is omitted from the printed record, pursuant to stipulation and order (*supra*, p. 565) subject to the right of either party to submit the same to the Court if so advised.

Plaintiff's Exhibit 75.

2266 [Letterhead of American Bonding Company of Baltimore]

September 3, 1931

Registered Mail

Return Receipt Requested

The Prudence Company, Inc.
162 Remsen Street
Brooklyn, N. Y.

Attention: Mr. G. S. Braislen,
Vice-President

2267 Re: Central Park Properties, Inc.

Gentlemen:

Under date of July 8th, I forwarded a letter to you by registered mail, a copy of which is hereto attached, wherein I requested of you a statement as to why you paid to the Central Park Properties, Inc., under your building and loan agreement, all but $75,000.00, when you now claim there is still over $417,000.00 worth of work still to be done.

I would be pleased to have a written explanation of this before discussing any further features
2268 of this case.

Yours very truly,

Albert E. Hart
Albert E. Hart
Attorney

AEH:LW
Enc.

Plaintiff's Exhibit 76.

2269

This CERTIFIES that CENTRAL PARK PROPERTIES, INC. has deposited with THE PRUDENCE COMPANY, INC., the sum of SEVENTY-FIVE THOUSAND ($75,000) DOLLARS, which sum shall be held by The Prudence Company, Inc. without interest until all the work of completing the building on premises on the south side of 59th Street, 100 feet east of Seventh Avenue 206 feet 4 inches in width along 59th Street, extending through to the northerly side of 58th Street, except the final coat of paint, has been completed to the satisfaction of The Prudence Company, Inc.

2270

The Prudence Company, Inc. is authorized and empowered at any time (but there is no obligation so to do) to apply said moneys so deposited, or any balance thereof remaining in its hands, on account of any interest or principal becoming due on the consolidated mortgage for $6,650,000 held by The Prudence Company, Inc. covering the premises above referred to, and as to any moneys not so applied, Central Park Properties, Inc. shall be entitled to receive the balance, except $25,000, when the building above mentioned has been fully completed to the satisfaction of The Prudence Company, Inc., except said final coat of paint, and

2271

when said final coat of paint is completed, said balance if not theretofore applied as above, shall be paid to said Central Park Properties, Inc.

This certificate does not, nor shall it be construed to in any way vary, change or alter the terms of the consolidated mortgage above mentioned and/or the bonds securing the same.

Dated New York, December 5th, 1930.

THE PRUDENCE COMPANY, INC.,
By: ALEXANDER JOHNSTON

2272 Plaintiff's Exhibits 77, 78, 79, 80, 81, 82 and 83, consisting of cancelled checks and receipts for various payments made by The Prudence Company, Inc., in the completion of the building, are omitted from the printed record, pursuant to stipulation and order (*supra*, p. 565) subject to the right of either party to submit the same to the Court if so advised.

Plaintiff's Exhibit 84.

5/7/34

SCHEDULE A (Revised)

2273 Payments made by The Prudence Company, Inc., in completing the building, and claimed to be chargeable against the Surety Company.

Note as to key numbers:
Arabic numbers refer to schedule annexed to complaint; roman numerals refer to paragraphs of the complaint.

Key No.	*Description of Item*			*Amount*
1	BLUE PRINTS			
	T Square & Triangle Co.		$20.38	
	Permanent Print Corporation		3.34	$23.72
38	BRONZE			
	(a) Bronze screens between entrance lobby and dining room and between entrance foyer and lounges		$1,350.00	
	(b) Installing 2 radiator grills in 59th Street vestibule		20.00	
2274	(c) Straightening bronze doors to ballroom		44.35	1,414.35
2	CARPENTRY			
	(a) Labor—Finkelstein & Padowitz, Inc.		$1,031.67	
	(b) Trim bills—			
	Lockwood Manufacturing Company	$3.60		
	C. A. Hasbrouck & Son	124.72		
	Bell Brothers Lumber Co.	22.00	150.32	1,181.99
3	CEMENT WORK			
	(a) Labor on patching		$27.38	
	(b) Materials		11.25	
	(c) V. Foscato, leveling Cement floors		608.00	646.63

Schedule A (Revised)

Key No.	*Description of Item*		*Amount*	
17	DAMP-PROOFING AND WATERPROOFING			2275
	(a) Window caulking—Hydro-Bar Corporation	$875.00		
	(b) Waterproofing elevator pits, S. E. Stott & Co.	225.00	1,100.00	
4	ELECTRIC			
	(a) Missing parts—			
	Cranell, Nugent & Kranzer, Inc.	$380.86		
	Rialto Electrical Co.	8.40		
	(b) Henrich Reflector Co. Inc. for fountain reflectors	40.50		
	Rialto Electrical Co., for installing same	3.50		
	(c) Frames for fire alarm system cards, New York Frame & Picture Co.	21.60	$454.86	
18	ELECTRIC CURRENT			2276
	Paid to United Electric Light & Power Company for periods:			
	Dec. 3, 1930 to Feb. 6, 1931	$882.36		
	Feb. 6, 1931 to Mar. 5, 1931	175.44		
	Mar. 5, 1931 to Apr. 4, 1931	278.64		
	Apr. 4, 1931 to May 5, 1931	573.44		
	May 5, 1931 to June 4, 1931	834.56		
	June 4, 1931 to July 6, 1931	1,202.32		
	July 6, 1931 to Aug. 4, 1931	1,137.12	5,083.88	
5	ELEVATORS			
	To Otis Elevator Company for:—			
	(a) Finishing work according to original contract with Central Park Properties, Inc.	$14,500.00		
	(b) Removing and re-installing pit equipment to permit waterproofing of elevator pits	395.00	14,895.00	
6	FIREPROOF WINDOWS			2277
	(a) Missing stools and trim—Chapman Metal Products Co. Inc.	$1,551.60		
	(b) Adjusting and repairing casement windows and doors—S. H. Pomeroy & Co. Inc.	125.00	1,676.00	
7	FIREPROOF DOORS AND BUCKS			
	(a) Materials for repairing doors Reliance Bronze & Steel Corporation	$22.50		
	(b) Moulding for mirrors on doors —Roselait Building Corporation	25.60	48.10	
9	FLOORS			
	(a) Scraping and finishing ballroom floor and platform—Builders' Wood Flooring Co.		210.00	

Schedule A (Revised)

	Key No.	*Description of Item*		*Amount*
2278	10	GLASS		
		(a) Replacing mirrors and glass E. Ossias	$1,431.40	
		(aa) Black glass for bronze grill in lobby—E. Ossias	175.00	
		(b) Hammond - Rough glass for bronze screen, first floor—Schwartz & Glasser	74.25	
		(c) Replacing broken lights—Marks Bros. Inc.	345.26	2,025.91
	11	HARDWARE		
		(a) Making master keying system, supplying missing keys and repairing locks—O'Byrne & Russell	$192.90	
		(b) 240 door stops—O'Bryne & Russell	48.00	
2279		(c) Missing hardware—Rosenthal Hardware Co.	508.70	
		(d) Amount paid to Rosenthal Hardware Co. for unattached hardware left in building when taken over	406.01	
		(e) 25 gross hat and coat hooks—Lockwood Manufacturing Co.	150.00	1,305.61
	19	INCINERATOR		
		Firing-tools for destructor Stanton-Murray Corp.		25.00
	XXXVII			
	(7)	INSURANCE		
		Apportioned for period ending October 1, 1931—Remsen Brokerage Co. Inc.		1,640.87
	12	IRON (Ornamental)		
2280		(a) Access doors—Ray-Daisley & Co.	$24.00	
		Karp Metal Products Co.	60.42	
		(b) Miscellaneous iron work: Gottleib Iron Works	275.00	
		Aetna Iron Works	275.00	634.42
	37	KITCHEN CABINETS		
		Missing hardware—White Door Bed Company		53.01
	20	KITCHEN EQUIPMENT		
		Repair work—Duparquet, Hout & Moneuse Co.		295.00

Schedule A (Revised)

Key No.	Description of Item		Amount	
				2281
13	LIGHTING FIXTURES			
	(a) Fixtures purchased to make up for missing fixtures—Shapiro & Aaronson, Inc.	$598.00		
	(b) Fixtures purchased from Lightolier Co. to make up for missing fixtures	321.20	919.20	
27	PAINTING			
	(a) Completing painting according to original plans and specifications as per contract April 27, 1931 Landsman Bros. & Soffin	$71,650.00		
	(b) Recalcimining 154 ceilings at $8.00	1,232.00	72,882.00	
				2282
41	PAYROLL			
	(a) Bing & Bing employees	$12,222.10		
	(b) Elevator operators	2,236.66		
	(c) Porters	2,495.82		
	(d) Watchmen	2,080.35		
	(e) Labor for steam maintenance	1,225.70	20,260.63	
30	PLASTERING			
	(a) Labor in plaster patching	$436.80		
	(b) Material	55.00	491.80	
31	PLUMBING			
	(a) 687 shower curtains at $2. each, Acme Curtain Co. (Note: Rayon taffeta curtains at $2.40 each were installed but plumbing specifications called for white duck and only $2. each, estimated fair price for white duck is claimed)	$1,374.00		
	Shower curtain pins, Acme Curtain Company	362.73		2283
	(b) Missing parts:			
	Moylan Supply Company	155.90		
	Charles H. Darmstadt, Inc.	6.00		
	(c) Patching and polishing bath tubs Burnstide Plumbers' Supply Co.	28.00		
	(d) Missing exterior bronze plates Murray & Sorenson, Inc.	30.00	1,956.63	
29	REFRIGERATORS			
	(a) Gas mask and cabinet—A. T. Miller Supply Co.	$21.78		
	(b) Repairing compressor—Voss Ice Machine Works	424.71		
	(c) Missing parts for Electrolux boxes in serving pantries—Consolidated Gas Co. of N. Y.	30.14	476.63	

Schedule A (Revised)

	Key No.	*Description of Item*		*Amount*
2284	32	ROOFING AND SHEET METAL		
		(a) Repairing terrace roof on 32nd floor—Premo Roofing Co. Inc.		54.26
	33	STEAMFITTING		
		Insulating of steam and incinerator ceilings — Asbestos Construction Co. Inc		700.00
	34	STEAM CONSUMPTION		
		Paid to New York Steam Corporation for periods:—		
		Dec. 20, 1930 to Jan. 6, 1931	$3,615.78	
		Jan. 6, 1931 to Jan 29, 1931	3,018.97	
		Jan. 29, 1931 to Feb. 28, 1931	4,107.72	
		Feb. 28, 1931 to Mar. 31, 1931	2,157.08	
		Mar. 31, 1931 to Apr. 30, 1931	381.31	
		Apr. 30, 1931 to May 29, 1931	161.46	
		May 29, 1931 to June 30, 1931	102.50	
2285		June 30, 1931 to July 31, 1931	102.60	13,647.42
		XXXVII		
		(4) SUPERVISION FEE FOR COMPLETION		
		Bing & Bing, Inc.		6,500.00
		XXXVII		
		(5) TAXES		
		First half of 1931		38,080.00
		XXXVII		
		(6) TAXES		
		Second half of 1931 (apportioned for period ending October 1, 1931)		19,040.00
	24	TELEPHONE		
		Paid to New York Telephone Company on bills dated:—		
		February 1, 1931	15.60	
		May 1, 1931	21.03	
		June 1, 1931	53.31	
2286		June 23, 1931	39.68	
		Estimated charges for July, August and September, 1931 (after installation of general switchboard) at $25. per month	75.00	204.62
	39	TERRAZZO		
		Polishing first floor terrazzo—V. Foscato		675.28
	16	MISCELLANEOUS		
		(a) Cleaning windows—Apartment House and Window Cleaning Company	$925.00	
		(b) Removing rubbish—		
		William Cox		
		19 loads at $7.50 per load; 78 loads at $7.00 per load	688.50	
		James E. Graham		
		40 loads at $7.00 per load	280.00	
		(c) Holmes Electric Protective Co.	502.11	2,395.61
		TOTAL		$210,999.73

Plaintiff's Exhibit 85.

2287

5/7/34

SCHEDULE B (Revised)

LABOR AND MATERIAL OMITTED BY CENTRAL PARK PROPERTIES AND NOT SUPPLIED BY THE PRUDENCE COMPANY, INC.; AND SUBSTITUTIONS BY THE CENTRAL PARK PROPERTIES, INC. OF MATERIALS INFERIOR TO THOSE CALLED FOR BY PLANS AND SPECIFICATIONS.

Key No.	*Description of Item*	*Amount*
38	BRONZE WORK	
	Bronze screens omitted from lobby floor.....	$1,650.00
	Glass for above	525.00
40	CABINET WORK	
	(a) Racks and shelving omitted in check room, 1st floor	150.00
	(b) Room Clerk's office, mail and key racks and shelving omitted	1,200.00
	(c) File racks and 4 wood screens on counters of desk space in main lobby omitted.....	550.00
	(d) Telephone room—counter and 6 phone booths omitted	1,350.00
	(e) Private dining rooms, 1st floor—wood folding doors omitted	1,158.00
2	CARPENTRY	
	(a) Kellastone carpet strips, 111,012 lineal feet at 6½¢ per lineal foot	7,215.00
	(b) Wood stools and aprons omitted from 2335 metal windows in rooms from 2nd to 40th floors inclusive Difference in cost between fire-proof wood stools and aprons and metal stools and aprons	5,137.00
	(c) Wood flooring omitted in private dining rooms	800.00
3	CEMENT BASE	
	Omission of sanitary cove in 25,472 lineal feet of cement base as shown by plans	2,037.76
43	CLOSETS	
	Omitted from servants' rooms—56 closets at $63.51 each (Gypsum blocks—Kalamein doors)	3,557.00
4	ELECTRIC	
	(a) Charts omitted from each panel box	300.00
	(b) Unfinished electrical work in barber shop (See electric plans)	250.00
21	MAIL CHUTE	
	Installed but not paid for; now in use under rental arrangement; cost, if not rented, would have been	4,000.00

2288

2289

Schedule B (Revised)

	Key No.	Description of Item		Amount
2290	22	MEDICINE CABINETS Difference between amount actually spent by Central Park Properties, Inc. for medicine cabinets, and amount called for in specifications as medicine cabinet expense		4,069.44
	27	PAINTING Difference between amount actually spent by The Prudence Company, Inc. to complete painting, and amount which would have been required to comply with plans and specifications, as shown by contract with Landsman Bros. & Soffin, dated April 27, 1931		19,150.00
	28	PLANT 2 additional sections for air filter and charging and cleaning tanks—specified but not furnished		100.00
2291	30	PLASTERING, FURRING AND LATHING (a) No plastering done in barber shop		713.00
		(b) Omission of Keene's cement wainscoting where called for by plans and specifications, 2392 square yards Difference in price between plaster and cement $1.00 per yard		2,392.00
	31	PLUMBING Items called for by specifications but never furnished or installed:		
		Perforated hush pipes in house tank discharging line	$50.00	
		Gas shut-off valve	150.00	
		Pressure gauge on water meter.....	50.00	
		6" check valve on water meter	125.00	
		Gauges on discharge of house pumps ..	100.00	
		Liquid soap dispenser system	300.00	
		2 Siamese connections.....	60.00	
		5 radiators in barber shop	625.00	
		Valve charts	300.00	1,760.00
2292	32	ROOFING AND SHEET METAL Amount demanded by Fordham Cornice Works (Central Park Properties' roofing contractor) to furnish guaranty called for by specifications		500.00
	44	ELEVATORS Reducing speed of express elevators from 700 feet to 600 feet per minute		2,840.00
	7	FIRE-PROOF DOORS AND BUCKS Iron Kalamein doors substituted for copper doors called for by specifications		200.00

Schedule B (Revised)

Key No.	*Description of Item*	*Amount*	2293
8	FIRE-PROOF ARCHES		
	Fire-proofing omitted on floor beams in 21st floor plenum chamber	200.00	
10	GLASS		
	(a) 681 bedroom mirrors—plain instead of beveled, as specified; cost of removing, beveling edges, resilvering and resetting, at $6.75 each	4,596.75	
12	IRON (Ornamental)		
	Vault door for book vault on 1st floor omitted	150.00	
13	LIGHTING FIXTURES		
	Difference between amount actually spent by Central Park Properties, Inc. for lighting fixtures, and amount specifications called for as lighting fixture expense	26,900.00	
16	MANTEL-PIECES		2294
	(a) 144 fire-places and mantel-pieces in living rooms from 18th to 38th floors, inclusive, for which specifications made an allowance of $150 each, omitted	21,600.00	
	(b) 4 fire-places and mantel-pieces on 39th floor, for which specifications made an allowance of $250 each, omitted	1,000.00	
14	MARBLE		
	Terrazzo border installed on lobby floor instead of marble border as called for by plans— Main dining room Dining terraces Palm and tea room and terrace Writing and fountain lounges	1,870.35	
33	STEAMFITTING		
	(a) 9 radiators omitted in all stores	700.00	
	(b) Valve charts and brass tags omitted	375.00	
	(c) One year's supply of gauge charts	25.00	
	(d) Radiators omitted in 568 interior bath rooms	25,000.00	2295
	(e) Cost of cutting and patching plaster and tile work to install same	17,000.00	
35	TERRA COTTA		
	(a) 13 caps missing from end piers on north and south terraces, first bulkhead	200.00	
	(b) Change in plans, without notice to The Prudence Company, Inc., to omit 25% of terra cotta on facade (estimated difference in cost)	12,416.00	
39	TERRAZZO		
	1395 square feet of terrazzo on 1st floor not polished, at 8¢ per square foot	111.60	

Schedule B (Revised)

2296	No. Key	Description of Item	Amount
	36	TILE	
		(a) Barber shop—floor and wall tile omitted..	2,022.00
		(b) Soap dishes installed over wash basins in 681 guest baths, instead of combination soap, glass and tooth brush holders	1,030.00
		(c) Fixtures omitted over lavatories in 56 servants' rooms	191.75
		Fee of general contractor or architect to supervise completion of above items—5% of total cost	8,849.63
		TOTAL.....	$185,842.28

Plaintiff's Exhibit 86.

2297 [LETTERHEAD OF A. E. LEFCOURT REALTY HOLDINGS.]

May 21st, 1929.

Mr. Frank Grad,
1023 Broad Street,
Newark, N. J.

Re:—59th St. C. P. So.

My dear Frank:—

A. E. asked me to look over the 59th Street proposition, and in order to do it, it will be necessary for me to have the approximate cubical contents and also the approximate square foot area, both to be of total, and also the height of the building.

2298

Will you kindly give me this information, and oblige

Sincerely yours,

LOUIS HAAS

LH:EB.

Plaintiff's Exhibit 87.

2299

[Letterhead of A. E. Lefcourt Realty Holdings.]

October 4th, 1929.

Frank Grad,
521 Fifth Avenue,
New York City.

Re:—Central Park Prop.

Dear Sir:—

We are enclosing herewith copy of list of amendments to the specifications as required by the Prudence Co.

2300

These are for your use and future reference.

Very truly yours,

Central Park Properties, Inc.
By L. Haas
Secretary.

EHK:LS K.

(The enclosure was a carbon copy of Plaintiff's Exhibit 6, amendments to specifications, dated September 24, 1929, and printed at page 673, *supra*.)

2301

Plaintiff's Exhibit 88.

2302

[Letterhead of A. E. Lefcourt Realty Holdings.]

April 7, 1930.

Frank Grad
521 Fifth Ave.
New York City.

Re: Central Park Properties
58th & 59th Sts.

Dear Sir:

Please be advised that in connection with the
2303 contract for the bronze work, the following items will be omitted from the contract:

1. Bronze screens on each side of the 59th Street entrance foyer.

2. Bronze screens to the breakfast and palm rooms.

3. Bronze screens to the stenographers' room.

4. Bronze screens to the fountain lounge.

5. Bronze saddle at dining check room.

Very truly yours,

2304

Central Park Properties, Inc.
By L. Haas
L

CWL:BS
(CC:Mr. Haas
Mr. Klein)

Plaintiff's Exhibit 89.

2305

REPORT

on the

ESSEX HOUSE
160-170 WEST 59TH STREET
NEW YORK CITY

July 6, 1931.

FRANK GRAD, ARCHITECT,
521 - Fifth Avenue
New York City.

2306

REPORT ON THE ESSEX HOUSE
160-170 WEST 59TH STREET

Following is a list of items which are at variance with the original specifications that were prepared for the Syndicate Subscription Corporation and dated May 31st, 1929.

The list includes items substituted for those specified, omitted, left unfinished or in need of repair at the time the 58-59 Realty Corporation took possession of the building.

* * *

Sec. 18

2307

1. Wood stools and aprons were omitted from 2,335 metal windows in rooms from 2nd to 40th floors, incls., which were specified on page 11, par. 39 of the Carpentry & Millwork spec.

Sec. 4

2. An allowance of $150. was made on page 9 of the Preliminary & Miscellaneous Work specification, for each fireplace mantle for each living room from the 18th to 38th floors, incl., 144 in all, and $250. each for the four mantles on the 39th floor. All of these fire-

2308

place mantles were omitted making a saving of $22,600.00.

Dr. # 10

3. T. C. caps omitted from buttresses bracing North wall at 41st floor.

Sec. 18
Dr. 14

4. Cement bases with wood cap moulding were substituted for the 6" one piece wood base specified on page 10 par. 33 of the Carpentry & Millwork Specification and on the schedule of interior finish for 574 foyers, 444 living rooms, 681 bed rooms and 473 serving pantries from the 2nd to 40th floors, incl.

2309 Sec. 18

5. Wood floors on 39th and 40th floors and on musician's platforms in main dining room and in breakfast room need to be scraped and finished as specified on page 7 par. 23 of the Carpentry & Millwork specification.

Dr. 14

6. Wood floors in private dining rooms omitted and finished cement floors installed instead.

Sec. 18
Page 7
Par. 23

7. Maple dance floor in main dining room needs to be scraped and finished as specified.

Sec. 18

8. Carpet strips as per page 9 par. 29 of the Carpentry & Millwork specification were omitted from all living rooms, bed rooms, foyers and corridors from 2nd to 40th floors, incl., and from dining room terraces, palm room, and writing and fountain lounge on the ground floor.

2310

Sec. 18
Dr. 14

9. Chair rails as per Carpentry & millwork specification, page 11 par. 35, was omitted from the cashiers' office, manager's office and assistant-manager's, public stenographer's room, main dining room and dining terraces and private dining rooms.

Sec. 18 Page 11 Par. 34

10. Picture moulding and base moulding omitted in several places in the building where same were specified. 2311

Sec. 18

11. Folding partitions as specified on page 9 par. 30 of the Carpentry and Millwork specification omitted from private dining rooms on the ground floor.

Sec. 17

12. All exterior windows and doors throughout the building were left uncaulked. Caulking specified on page 5 par. 10 of the Waterproofing & Caulking specification.

Sec. 10 Page 14 Par. 19

13. Stone work needs to be cleaned down. 2312

Sec. 9 Page 7 Par. 15

14. The sanitary cove which was detailed on drawing #14 was omitted from all cement bases including bases, which were originally specified as cement bases.

15. Floors, bases, and steps broken and in need of repair in basement and bulkhead floors.

Sec. 20 Page 2 Par. 4 Dr. 2-10

16. Columns and pipes not furred in in barber shop and elevator machine room in bulkhead.

Sec. 21

17. Par. 20 on page 10 of the Plastering specification and schedule sheet #14 calls for a wainscot of Keene's cement, 4'-6" high, in all service elevator vestibules and lobbies throughout the building. No Keene's cement wainscot were put in any of these spaces. 2313

Sec. 21 Page 3 & 7

18. Damaged and uneven plaster work in need of patching and replacement.

Dr. 10

19. Ceilings of the terraces on the 39th floor were left unfinished, having only the scratch coat applied.

2314 not called for

20. Fan room on mezzanine roof in east court has not been plastered.

Dr. 14

21. Tank rooms, elevator machine rooms, etc. were to be faced with a smooth hollow tile. These rooms, with the exception of the elevator machine rooms on the 21st floor, have been plastered with cement plaster instead. The elevator machine rooms on the 19th floor have been white coated.

Sec. 4
Page 9

22. Glass shelving omitted from all medicine cabinets.

Sec. 27
2315 Page 6 Par. 11
Dr. 14

23. Mirrors omitted from mirror doors on all floors with the exception of a few on the topmost floors. Approximately 670 full length mirrors were omitted.

Sec. 4
Page 9

24. Medicine cabinet mirrors that are imperfect have not been replaced.

Dr. 14-2
M. E.

25. Beauty and barber shop unfinished—originally supposed to have had tile floor and base, 6′-9″ tile wainscot, plaster walls, cove cornice and furred ceiling; roughing for plumbing fixtures and electric wall and base receptacles omitted.

2316 Sec. 29
Page 7 Par. 13

26. Combination soap, glass and toothbrush holders omitted from bathrooms.

M. E.
Page 43
Par. 90

27. Shower curtains omitted from all baths with showers.

M. E. P 40
Par. 83

28. Liquid soap dispenser for public toilet rooms omitted.

29. Five extinguishers omitted.

t fl. plan 30. Five (5) lavatories omitted from barber shop. 2317

I E plan 31. Drain in incinerator pit omitted.

ec. 29 32. Crazed tile in bath rooms has not been replaced, as called for on page 8 par. 14 of the Tile Work specification.

Detail Dr. 33. Teak and burl wall panelling was omitted from behind the desk space, cashier's space and news and ticket stand.

ec. 19 34. Teak and burl panelling on ground floor has
. 4 Par. 11 blistered and opened up at joints in several places. This work has not been finished as described in the Cabinet Work specification 2318 on page 6 par 12.

35. Key and mail racks omitted from clerk's space.

Detail 36. Four counter screens of burls and ebony were
#216 omitted from founters of desk space in main entrance lobby.

ec. 16 37. Ornamental bronze and glass screens de-
P 8. Par 14-19 tailed on drawings #202 and #203, were omitted from the following locations:—

Between palm room and entrance lobby; breakfast room and entrance lobby; entrance foyer and men's and women's lounges; elevator lobby and stenographer's room; elevator lobby and fountain lounge. 2319

ec. 1 38. Two bronze radiator grilles omitted in 59th
P 1. Par 3 Street entrance vestibule.

M. E. 39. Radiators omitted from all interior bath rooms.

2320	M. E.	40. Radiators for the West 58th Street shops and barber and beauty shops are not installed.
	M. E.	41. Gauges, valve charts and brass tags for valves of heating system omitted.
		42. Rubbish chute from 40th floor to basement omitted.
	Sec. 22 P 5. Par. 12-14	43. Built-up roofing on court roofs left in need of repair and sections of felt flashing omitted.
	Dr 10	44. Copper louvres and screens were omitted from the main stack on the main bulkhead roof.
2321	Sec. 26 P. 5 Par. 12	45. Ordinary kalamein doors installed in fan rooms on roofs instead of copper kalamein as specified.
		46. Damaged doors and bucks in duplex apartments on the 39th and 40th floors should be replaced with new doors.
	Sec 25 P 1. Par 4	47. Rubber bumpers for elevator door stops not installed.
		48. Elevator doors need adjusting.
		49. Glazing beads missing from exterior glazed doors.
2322		
	M. E.	50. Access doors in bath rooms, etc. with broken hinges, catches, etc. left in need of repair.
	Sec 18 P. 9 Par 32	51. Hooks and hanging rods omitted from many of the closets throughout the building.
	Sec 4	52. Many doors throughout the building without locks, escutcheons, or knobs.
	Sec 4	53. Hardware missing from fan room windows on the 41st floor.

ec 4

54. Door bumpers and stops omitted in many places where same are required. 2323

ec 4
age 9

55. No master keying system was made for the building.

56. Railing and ladder in front of steam room not properly secured to floor.

ec 15
. 15 Par 26

57. An allowance of $150.00 was made for a vault door for a book vault in the executive office on the mezzanine. This vault was omitted.

r 1

58. Ladder in meter closet omitted, also ladder in one of the elevator pits.

M. E.

59. Wire safety guards around movable parts of ice-making and refrigerating machinery omitted. 2324

M. E.
. 30 Par 65

60. Siamese connection omitted on East side of West 58th Street entrance.

M. E.

61. Perforated brass plate for vent to gas meter room under 58th Street sidewalks was omitted.

ec. 10

62. Brick costing $33.00 per thousand was used instead of the $38.00 per thousand brick specified on page 3 par. 5 of the Masonry specification.

ec 10
. 9 Par 13

63. Brickwork needs to be pointed in various places. 2325

ec. 28
. 2 Par 4
6 Par 15

64. Marble borders in entrance foyer, main entrance lobby, men's and women's lounges, palm room, dining room terraces, breakfast room and terrace, corridor #1, elevator lobby, stenographer's room, telephone room, fountain lounge, etc., except along edges of terraces, were omitted and terrazzo used in its place.

2326 Sec 28 P 4 Par 8

65. Blue Belge marble was substituted for French Rouge Antique or Red Levante marble for counter tops in desk space, cashier's space, news and ticket stand, head porter's closet, house phone desk, and on top of the low partitions between foyer and men's and women's lounges.

Blue Belge marble was also substituted for Tinos and Noir Fossile marbles where same were specified for bases on the ground floor details and in revised marble specification of April 30th, 1931.

2327

66. Where French Rouge Antique or Red Lavante marble was specified for stair treads on the ground floor plan, Blue Belge marble was substituted.

Sec 28 P 3 Par 13

67. Marble saddles missing from under several bath room doors.

Sec 30 P 4 Par 8

68. All terrazzo floors and borders throughout the public rooms on the ground floor were left unpolished.

69. Cork floor omitted from 39th floor elevator lobby.

2328 Dr 1

70. Concrete platform, iron pipe railing, trolley beam and block, and wrought iron ladder to pit were omitted in the incinerator room in the basement.

M. E.

71. Water storage tanks and piping in the tank rooms on the 22nd, 2nd bulkhead floors and tank room on roof were left unpainted.

Sec 31 P 9 Par 18

72. Machine and mechanical equipment rooms are spray painted only instead of having two (20

coats of Maxwells cold water paint as specified in the Plain Painting specification. 2329

31 Par 17

73. All furniture steel doors and kalamein doors and trim throughout the building have not been painted except for the shop coat.

31 0. Par 18

74. Excepting the basement, ground floor, stairways, bulkhead floors, and some of the rooms on the lower floors of the building, no painting has been done. The living rooms, bed rooms, foyers, baths, etc., on the lower floors that have been painted have only two (2) coats of paint on the walls and kalsomined ceilings instead of the three (3) coats of lead and oil paint as specified. 2330

31 8. Par 17

75. Radiator enclosures painted two (2) coats only in rooms where the rooms have received the two (2) coats of paint. Balance of enclosures have only the shop coat of paint.

31 10 Par 18

76. Cement bases painted only in rooms where walls have been painted.

E.

77. Various gauges and valves missing from pumps and gas and water lines.

E.

78. Charts and tags for valves not furnished. 2331

79. Parts of kitchen equipment missing and adjusting of other parts is necessary.

E.

80. Shower heads have been omitted from helps' shower rooms in basement.

81. Fire alarm system cards, frames, recorders, etc. omitted.

82. Charts and fuses omitted from panel boxes.

83. Lighting fixtures are missing from many rooms throughout the building.

2332

84. Striplights and reflectors omitted from cover around the fountain lounge on the ground floor.

Sec 4 P 9

85. $50,000. allowance was made for lighting fixtures, installation, connection and inspection fees—in our estimation less than half of this sum was spent for this work.

Sec 4 P 9

86. The following allowances were made in the original specifications, all of them in our opinion being in excess of the monies spent for the various items.

2333

Finishing Hardware	$50,000.
Medicine Cabinets	10,000.
Serving Pantry Cabinets	20,000.
Apartment Refrigerators	70,000.

87. Windows, toilets, floors, etc. not cleaned and rubbish left on premises.

88. Wood closets on IInd fl. omitted in 90% of rooms.

89. Shaft linings of express El. omitted.

90. Elevator Hangers substituted price reduced by $960.00

2334

91. Terra Cotta Saving —

92. Elevator speed—700 to 600 El spec. ¶ 2.

Plaintiff's Exhibit 90.

2335

[Letterhead of A. E. Lefcourt Realty Holdings.]

April 9th, 1930.

Mr. Frank Grad,
521 Fifth Avenue,
New York City.

Re:—Central Park Properties
58th-59th Streets

Dear Sir:—

In reply to your favor of the 8th instant, relative to the omission of the Bronze Screens, will 2336
you kindly call at this office with Mr. Sanger Thursday afternoon at 5 P. M., and we will then discuss the matter with you.

Yours very truly,

Central Park Properties, Inc.
By L. Haas
Secretary.

LH:EB.
(CC Lush-
Klein)

2337

Plaintiff's Exhibit 91 for Identification, a copy of a memorandum from C. W. Lush to Mr. Haas, dated March 6th, 1930, with reference to possible economies through omission of closets in servants' rooms, is omitted from the record.

Plaintiff's Exhibit 92.

2338 [Letterhead of A. E. Lefcourt Realty Holdings.]

March 17th, 1930.

Mr. Frank Grad,
521 Fifth Avenue,
New York City.

Re:—Central Park Properties

Dear Sir:—

Please note that built-in closets are to be omitted from the servants rooms listed below, as we are going to buy portable steel wardrobes in place
2339 of the closets.

Hollow Metal Prod. Corp.'s buck schedule should be corrected to omit the bucks for these closets.

Servants rooms #31, 32, 33, 34, 35, 36, 39, 40 to 49 inclusive, 51, 54, 55, 56, 57, 58, 59, 60 to 69 inclusive, 72 to 77 inclusive, 80, 83, 84, 85, 86, 87 and 88.

Very truly yours,

Central Park Properties, Inc.
By L. Haas
Secretary.

2340 CWL:LS
CC Mr. Klein-Mr. Kiely
Mr. Banfield
Hollow Metal Prod. Corp.

Plaintiff's Exhibit 93, the original cloth tracing of the second floor plan, Sheet No. 4 of the plans prepared by Frank Grad, architect, is omitted from the printed record, pursuant to stipulation and order (*supra*, p. 565) subject to the right of either party to submit the same to the Court if so advised.

Plaintiff's Exhibit 94.

2341

[Letterhead of A. E. Lefcourt Realty Holdings.]

December 7th, 1929.

Frank Grad,
521 Fifth Avenue,
New York City.

Re:—Central Park Properties.

Dear Sir:—

It has been decided to omit fireplaces from the following rooms:—

2342

Rooms 10 & 36 on 14th to 17th floors, incl.
" 6 & 21 " 18th to 20th " "
" 15 " 21st floor
" 5 & 20 " 22nd to 30th " "

Further in connection with these rooms, the mechanical specifications are to request one alternate for the omission of plumbing fixtures and refrigerators from serving pantries of these rooms, leaving roughing for same, and another alternate for the omission of roughing work, fixtures and refrigerators. Your specifications for cabinets should provide an alternate for the omission of cabinets from the serving pantries of these rooms.

2343

Very truly yours,

Central Park Properties, Inc.
By L. Haas
S
Secretary.

CWL:LS

CC Mr. Kingsley-Mr. Klein
Mr. Youngson

2344 Plaintiff's Exhibits for Identification Nos. 95 and 96, consisting of memos from C. W. Lush to Frank Grad, dated April 29, 1930, and March 5, 1930, directing the substitution of terrazzo for marble in certain locations, and the omission of caulking in certain window spaces are omitted from the printed record, pursuant to stipulation and order (*supra*, p. 565).

Plaintiff's Exhibit 97.

(Copy)

2345 [Letterhead of A. E. Lefcourt Realty Holdings.]

December 18th, 1929.

Otis Elevator Company,
11th Ave. & 26th St.,
New York City.

Attention of Mr. Glover Beardsley
Re:—Central Park Properties—58th & 59th Sts.

Gentlemen:—

2346 In reply to your favor of the 16th instant, which was in answer to our letter to you of the 12th instant, relative to the reducing of the speed of Passenger Cars #1, 2, and 3, and Combination Car #4, from 700 feet per minute to 600 feet per minute, and for which you have agreed to allow us a credit of $2840.00 for this change, we wish to say that we have decided to make this change, and also to take advantage of the credit you allow.

Will you therefore, kindly send us a credit memorandum for this amount, and also send us

Plaintiff's Exhibit 97

five copies of a rider, noting this change, which we will attach to and paste on the page covering this change in the contracts. 2347

Thanking you, and awaiting your reply, we remain

Yours very truly,

CENTRAL PARK PROPERTIES, INC.

By_____

LH:EB Secretary.

(CC Grad-Kingsley-
Lush-Klein-Mayer)

Plaintiff's Exhibits 98, 99, 100, 101 and 102, consisting of mechanical specifications for the building, dated June 1, 1929, and labeled respectively "Heating and Ventilating," "Plumbing," "Electric," "Refrigerators" and "Elevators," are omitted from the printed record, pursuant to stipulation and order (*supra*, p. 565) subject to the right of either party to submit the same to the Court if so advised. 2348

Plaintiff's Exhibit 103.

[LETTERHEAD OF A. E. LEFCOURT REALTY HOLDINGS.] 2349

November 15th, 1929.

Mr. Frank Grad,
521 Fifth Avenue,
New York City.

Re:—Central Park Properties
58th-59th Sts.

Dear Sir:—

We are in receipt of your favor of the 9th instant, relative to the manner in which the bids

Plaintiff's Exhibit 103

2350 for Terra Cotta have been received by us, and we do not agree with your statement; neither do we agree with the statement of the Terra Cotta manufacturers.

Nobody can disagree with the fact that at least 25 to 30% of Terra Cotta was omitted from the revised plans, and this certainly is a factor in arriving at the cost, and we still insist that something will have to be done between you, the plans and the bidders, in order to get them back and make some reduction without fail immediately.

Yours very truly,

2351 CENTRAL PARK PROPERTIES, INC.
By L. HAAS
Secretary.

LH:EB.

2352

Plaintiff's Exhibit 104.

Plaintiff's Exhibit 105 for Identification, consisting of bulky note-books and work-sheets prepared by Mr. O'Brien and Mr. Lukach, and introduced during the testimony of Mr. Lukach (p. 226), are omitted from the printed record by stipulation and order (*supra*, p. 565).

Plaintiff's Exhibit 106.

(Copy)

May 27, 1931.

Keeler, Inc.,
Graybar Building,
New York City

Re: 160 W. 59th Street

Dear Sirs:

We are handing your representative, Mr. Switzer, today, complete electrical, plumbing and heating and ventilating plans for the above building comprising 43 sheets; also one complete set of architectural plans, comprising 14 sheets of blue-prints:

In addition, we are also furnishing you with the following specifications prepared by Frank Grad, Architect:

Special Conditions
Preliminary & Miscellaneous Work
Excavation
Concrete Masonry
Arch Construction & Fireproofing
Concrete Fill & Cement Finish
Masonry
Granite
Cut Stone

Plaintiff's Exhibit 106

Terra Cotta
Steel Stairs
Ornamental & Misc. Iron
Ornamental Bronze
Waterproofing & Caulking
Carpentry & Mill Work
Cabinet Work
Structural Steel
Metal Furring & Lathing
Plastering
Sheet Metal & Roofing
Solid Steel Windows
Metal Windows
Hollow Metal Work
Kalamein Work
Glass & Glazing
Marble Work
Tile Work
Terrazzo
Plain Painting
Mail Chute
Garbage Refuse Destructor
Soundproofing

2359

2360

Very truly yours,

58-59 Realty Corporation,
By A S L
A. S. Lukach.

2361

Received by
Keeler, Inc.,
Keeler, Inc.
By H. Switzer

Dated

Plaintiff's Exhibit 107.

2362 [Letterhead of Globe Painting and Decorating Company, Inc.]

Apr. 11, 1931

Re: #160 West 59 Street

Mr. A. S. Lukach
160 West 59 St.,
New York City.

Dear Sir:

Replying to your verbal request for information as to why the walls on the above job cannot
2363 be finished with one coat of paint, please be advised that the job has been standing in the present condition for such a length of time that the proper adhesive qualities of the paint surface on the plaster have disappeared to a great extent and it will be necessary to apply a treatment that will cause the finishing coat of paint to adhere properly and cover.

Very truly yours,

Globe Painting and Decorating Co., Inc.
P H Gladstone
P. H. Gladstone—Gen. Mgr.

2364 D

Plaintiff's Exhibit 108.

2365

[Letterhead of A. E. Lefcourt Realty Holdings.]

October 16th, 1929.

Mr. Frank Grad,
521 Fifth Avenue,
New York City.

Att. of Mr. Sanger
Re: Central Park Properties

Dear Sir:

Enclosed herewith is transcript of our notes on Heating and Plumbing. The notes on Plumbing were given you on October 11th. 2366

We also wish to confirm the verbal instructions given on certain features, as follows:

1.—No radiation to be provided for interior bath-rooms.

2.—Lever handles to be used on radiator control valves.

3.—No linen or rubbish chute to be provided.

4.—Two (2″) inches of cinder fill and 1″ of cement finish is to be used in lieu of monolithic finish. 2367

Yours very truly,

Central Park Properties, Inc.
By L. Haas S.
Secretary.

WCL:EB.
(CC Klein)

Plaintiff's Exhibit 109.

2368

22nd

Initialed O. E. Co.
NLS
GSL

AGREEMENT made the ~~16th~~ day of April, 1931 BETWEEN 58-59 REALTY CORPORATION hereinafter called the builder, and OTIS ELEVATOR COMPANY, hereinafter called the contractor.

WITNESSETH: Article I. The Contractor shall provide for the building hereinafter mentioned all the labor and materials hereinafter set forth ~~in accordance with the specifications hereto annexed and as shown on plans, drawings and details prepared by the builder's architect, which plans, etc., are to be returned to the builder upon the completion of the work. Such additional drawings as may be necessary to explain and detail the work will be furnished by the architect, and are to be conformed to except where inconsistent with original plans and specifications. The plans, drawings and details, and the specifications are intended to supplement one another, and any work or materials shown or mentioned in one and not in the others are to be furnished by the contractor without extra charge. The enumeration of particular items in this agreement or in the specifications shall not be construed to exclude other items.~~ The contractor shall furnish, without extra charge, all work and materials not mentioned or shown, but generally included under this class of contract, and also any work or materials of the kind herein contracted for required to conform the building to all Laws, and the Rules and Regulations of all Municipal Departments.*

2369

Initialed O. E. Co.
NLS
GSL

2370

* * * * * * * *

Contractor's Address—11th Avenue and 26th Street, New York City

Builder's Address—160 W. 59th St., City

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* Certain formal portions of this contract, Exhibit 109, not material to this cause, are omitted from the printed record, pursuant to stipulation (*supra*, p. 565).

Plaintiff's Exhibit 109

Architect—Frank Grad, 1023 Broad Street, Newark, N. J. 2371

Description of Building—One forty story hotel building with basement, and pent house situated at 160 West 59th Street and 155-165 West 58th Street, Borough of Manhattan, City of New York —size of plot being 206'4" x 200'10".

Labor and Materials to be furnished by contractor—For furnishing all labor and material required to complete the original contract covering all elevators, signal systems, door operating devices and allied equipment.

2372

The contractor guarantees, for a period of one (1) year from final acceptance, to repair, replace and make good any defects due to faulty workmanship or material.

The contractor will instruct the Owner's representatives in the proper operation and maintenance of all equipment and will, after completion, give the entire installation their usual inspection and supervision.

Contract Price—Fourteen Thousand Five Hundred ($14,500) Dollars.

* * * * * * * * 2373

58-59 Realty Corporation
By A. S. Lukach
Vice-President
H. A. Frey,
President

Otis Elevator Company,
Manhattan Zone
By N. L. Summerlat,
Assistant Sales Manager.

Defendants' Exhibit A.

2374 Pr. Bldg. & ~~Perm.~~ Acceptance 1/28—No. 264.

Search Entered by.....

Title No. .....

THE PRUDENCE COMPANY, INC.

331 Madison Avenue, New York

162 Remsen Street, Brooklyn
161-10 Jamaica Avenue, Jamaica, N. Y.

2375 (The above is endorsed upon the back of the instrument, the text of which follows:)

LOAN ACCEPTANCE

September 6th 1929

Central Park Properties, Inc.,
1359 Broadway,
New York, N. Y.

GENTLEMEN:

Upon the terms and conditions herein set forth, we accept your application for a building ~~and permanent~~ first mortgage loan in the amount of
2376 SIX MILLION SIX HUNDRED FIFTY THOUSAND— dollars, to be secured by the bond and mortgage hereinafter mentioned, said mortgage to cover the premises hereinafter referred to or described; at our option, said loan may be made by our nominee, in which case the building loan agreement hereinafter provided for shall be made by such nominee and the bond and mortgage hereinafter provided for shall be made to such nominee.

You agree to supply the information herein required, and to execute and deliver the papers herein provided for.

Loan Acceptance

PREMISES: 2377

The land described in Schedule "A" hereof, together with the buildings and other improvements erected and to be erected thereon, and the equipment and personal property contained or to be contained therein, and also the appurtenances if any, to said premises, including all easements and rights of way.

TITLE AND SURVEYS:

You agree that such mortgage shall be a valid first lien in the amount thereof on said premises and on a good and marketable title thereto in fee 2378
simple, free and clear of all liens and encumbrances and of such nature as the Title Insurance Company to which application is made for title insurance to cover the mortgage, shall approve and insure as good and marketable in fee simple. Restrictive covenants against nuisances and party wall agreement as modified, as shown in report of Lawyers Title and Guaranty Co., will be passed by us.

BOND AND MORTGAGE, BUILDING LOAN AGREEMENT AND OTHER PAPERS:

You are to execute, acknowledge and deliver a 2379
bond and first mortgage, corporate consents if any are required, and any other instruments required by our counsel to constitute said mortgage a valid first lien upon said premises; all instruments to be on the forms usually employed by us. The principal amount of said bond and mortgage shall be SIX MILLION SIX HUNDRED AND FIFTY THOUSAND —dollars. Said bond and mortgage shall bear interest at the rate of—six—per cent. per annum, payable September 16, 1930 and quarter-annually

thereafter; interest on the full principal amount shall run from the date herein fixed for completion of the building to be erected on said premises, whether or not said building be completed on said day, unless the full amount shall be fully advanced prior to said day, in which case interest on the full amount of principal shall run from the date of the final advance; interest on all amounts advanced prior to such completion date shall be due at the time of each succeeding advance and upon any regular interest date occurring prior to such completion date. The principal amount of said bond and mortgage shall be due and payable ~~in instalments as follows~~: December 16, 1930 Subject to all the terms and conditions of this agreement, we agree to make a first advance, at the time herein set for closing, of $3,250,000 gross, from which all fees, commissions and disbursements, as provided herein, shall be deducted.

Upon compliance by you with all the terms and conditions of this agreement and provided you are not in default as to any of the terms and conditions of the building loan agreement and the bond and mortgage to be given hereunder, we agree to make subsequent advances on the basis of 75% of the value, as determined by us, of labor and materials installed and incorporated in the work.

~~At our option the maturity of said mortgage may be subsequent to the date above provided but not later than _____ 19____, and we may change the instalment and interest payment dates to~~

We may take existing mortgages on said premises by assignment at the closing of this loan, and upon our request you will arrange with the mortgagees for assignment or assignments of such

mortgages and we shall be entitled to have such 2383
mortgages spread, consolidated, modified and extended in conjunction with a new mortgage for the balance of principal amount of this loan, in such manner as to create a valid first lien in the amount of this loan on a good and marketable title in fee simple to the said premises described in Schedule A of the nature hereinabove specified. You represent that the mortgage tax of one-half of one per centum has been paid upon all mortgages now liens upon the premises. ~~At our option, you shall execute, on the closing of this loan, two bonds and mortgages in amounts designated by us and totaling the principal amount of this~~ 2384
~~loan, such mortgages containing suitable provision for consolidation thereof upon completion of the building to be erected on said premises.~~

Payment of principal and interest on said bond and mortgage when due and all other payments required to be made hereunder and the performance of all the terms and conditions herein contained on your part to be performed pursuant to this acceptance, shall be guaranteed ~~jointly and severally~~ by Abraham E. Lefcourt, such guarantee to become null and void when customary certificates of occupancy have been issued by 2385
Municipal or State Departments having jurisdiction and deliver such guarantees on closing and you agree to obtain such guarantee or guarantees in form satisfactory to us.

~~Until the amount secured by said bond and mortgage is fully paid, the owner of the mortgaged premises shall deposit in advance with us, whether or not we shall then be the holder of said bond and mortgage, on the first day of~~

2386 ~~19 .; and thereafter, the equal proportionate part of the principal and interest falling due on said bond on the next succeeding interest date and the equal proportionate part of the taxes which will fall due nearest such interest date (whether before or after). Said deposits shall be held by us without interest to the depositor and applied as follows: so much of said deposits as may be required to pay taxes shall be reserved and used to pay the same and the balance shall be applied on interest dates for the other purposes for which deposited. —The mortgage shall provide that both principal and interest shall be payable without deduction for any Federal or State taxes, assessments or charges, and that there shall be paid to us semi-annually, an amount equal to four per cent. of the semi-annual interest on said bond and mortgage in lieu of normal Federal income taxes.~~

2387 You are to execute, acknowledge and deliver a building loan agreement in our standard form, which agreement shall contain the terms of this loan and provide, among other things, that advances upon said bond and mortgage shall be made during construction in such amounts and at such times ~~as our appraisers shall approve~~ as herein before provided.

2388 ~~—All existing leases on the premises shall, at our option, be assigned to us on the closing of this loan as additional security.~~

INSURANCE AND SURETY BOND:

You will place through Remsen Brokerage Company, Inc., 166 Remsen Street, Brooklyn, New York, or any other insurance broker designated by The Prudence Company, Inc., the surety bond

hereinafter mentioned, and all fire, lightning, 2389
~~workmen's~~ ~~compensation,~~ ~~tornado,~~ ~~flood,~~ ~~earthquake~~ and steam boiler explosion insurance together with any other insurance deemed necessary by us, affecting the buildings and improvements on said premises until the mortgage is paid. The facilities of that Company will be at your service to co-operate with you in procuring minimum rates.

You shall furnish a surety bond in the amount
$3,000,000
of /~~this~~ ~~loan,~~ in form satisfactory to us and in a Company satisfactory to us, guaranteeing to us completion of said building equipped as herein 2390
provided, within the time specified, in accordance with said plans and specifications, and free from mechanics liens.

NEW BUILDING:

You agree to erect upon said premises, a build-
Heretofore submitted to us by Frank Grad, Architect

ing from plans / and specifications ~~to be~~ submitted
to be
to and /made satisfactory to us in every respect, including design, material and workmanship, said 2391
~~plans and~~ specifications to be ~~so submitted and~~ approved before construction work is commenced, and you agree that construction work shall commence not later than September 23rd 1929, and shall proceed continuously thereafter so that the building shall be completed and ready for occupancy not later than December 16, 1930 (hereinafter referred to as the date for completion). Said building and the materials and workmanship therein contained, shall be in all respects ~~at least~~

2392 ~~equal to the building at~~ a first-class apartment hotel.

You represent that the cubical contents of said building when completed will be not less than 7,000,000 cubic feet to be computed from a point four inches below the top of the finished cellar floor to the average height of the top of the roof beams.

We shall have the privilege of placing and keeping neat advertising signs on said building during the course of construction. The owner shall have the right to move and replace said signs on the building as becomes necessary during construc-
2393 tion.

REPRESENTATIONS AS TO FINANCIAL STANDING, AND OTHER ITEMS:

This acceptance is at our option conditional upon the following representations made by you, satisfactory evidence supporting which you shall furnish to us at any time upon our request in form satisfactory to our counsel:

The aggregate net worth of Abraham E. Lefcourt exclusive of any interest in the premises described in Schedule "A" is in excess of Three Million Five Hundred Thousand Dollars, and you
2394 five
agree to furnish to us at least / ~~fifteen~~ days before the closing date hereinafter mentioned, financial statements of said persons to such effect satisfactory to us and upon our usual printed forms.

You paid for said land, the sum of Four Million dollars, in the year 1928. ~~The building now being (to be) erected on said land will cost at least the sum of ——————— dollars.~~

Loan Acceptance

You represent that there is on record a mortgage 2395
of $1,400,000. a lien upon the premises described in Schedule "A", which at or prior to closing will be subordinated to said first mortgage of $6,650,000. and that there is an agreement made in connection with said mortgage of $1,400,000 which provides that upon completion of said building to be erected on the premises described in Schedule "A" that the holder of said mortgage of $1,400,000 will advance an additional sum of $600,000, making said second mortgage upon completion of said building in principal amount $2,000,000 subordinate to said first mortgage of 2396
$6,650,000, all of which subordination agreements shall be in form and substance satisfactory to our counsel, and you represent that said agreement to advance the additional sum of $600,000. is guaranteed by Frederick Brown.

You agree that prior to the time herein set for closing that you will cause or already have caused plans for said building to be filed with the Municipal and State Departments having jurisdiction, and that you will obtain or already have obtained the approval of such departments to such plans, and you further agree that we shall not be required to make any advances hereunder unless at 2397
the time herein set for closing you exhibit to us all necessary permits and certificates of approval issued by the departments having jurisdiction authorizing the erection of the building shown on the plans referred to herein, and that such approval and permits shall be in effect on the day of closing.

If you are unable to secure a permit for the erection of the proposed building, it is understood and

agreed that the amount of liquidated damages shall be the sum of $25,000, which you have paid on account of the fee.

FEES:

You shall pay to us a fee of Four Hundred Thousand dollars on the date hereinafter set for closing this loan, as part consideration for our agreement to make this loan. If you refuse or fail to close this loan and we are not in default, the entire damages which we will thereby sustain cannot be determined exactly, therefore it is agreed that, in the event of default upon your $50,000. part, you shall pay to us the amount of ~~said fee~~ on said date set for closing as liquidated damages for your refusal or failure to perform this agreement completely, ~~or, at our option, in case of such default by you we may require that you comply with all of the terms of this agreement.~~ which includes $25,000. paid on account of said fee

You shall pay in addition to the fee above mentioned the fees of our counsel for the drawing of the necessary instruments, the recording fees, the revenue stamps, if any, required on any documents, the mortgage tax on any mortgage herein provided for, and also the gross charges of the Title Company for examination of title to said premises and issuance of its policy in the amount of this loan and its charges for making searches on advances and for attendance at each building loan advance, together with our inspection fees of $25. for each inspection. Surveys, whenever required by us, shall be furnished by you acceptable to us.

Loan Acceptance

~~You shall sign the application for title insurance~~, but such title insurance is to be ordered through our counsel and report of title is to be delivered to our counsel. 2401

Receipt is hereby acknowledged of $25,000.— on account of the fee payable to us as above provided for. Time of closing is of the essence of this agreement

CLOSING:

You agree to execute, acknowledge and deliver the building loan agreements hereinbefore provided for, at our office, 331 Madison Ave. N. Y. 11 2402 City on September 23, 1929, at ~~10~~ A. M.

This loan shall close at our office, 331 Madison 11 Ave. N. Y. City on September 23, 1929, at ~~10~~ A. M., ~~or prior thereto upon three days' written notice to you,~~ at the time of which closing you shall deliver said bond and mortgage and other instruments herein provided for. The bond and mortgage and all other instruments shall be upon our usual forms and satisfactory to our counsel.

THE PRUDENCE COMPANY, INC.,
By: 2403

President
Vice-President

Secretary
Treasurer

Having made application to THE PRUDENCE COMPANY, INC., for a loan in the amount and upon

Loan Acceptance

2404 the terms hereinbefore set forth, we hereby accept such loan upon said terms and conditions, and agree to execute all instruments therein required, and we further covenant and agree to comply with all the terms and conditions hereinbefore set forth on our part to be performed, and to make all payments on our part to be made.

CENTRAL PARK PROPERTIES, INC.

By:.....

President.

.....

Secretary

2405 To induce THE PRUDENCE COMPANY, INC., to deliver the foregoing loan acceptance and in consideration thereof, ~~we,~~ the undersigned, sometimes herein referred to as guarantors, ~~jointly and severally~~ guarantee to THE PRUDENCE COMPANY, INC., payment its successors and assigns, the ~~performance~~ by CENTRAL PARK PROPERTIES, INC. of above mentioned liquidated damages of $50,000. or $25,000. as herein provided if said loan does not close as herein provided. ~~of all the terms, conditions and~~

2406 ~~agreements contained in the foregoing acceptance, or either of them, and we, the said guarantors, further guarantee the payment of all fees, disbursements and expense provided for in said acceptance, and we further agree to execute and deliver upon the signing of the building loan agreement provided for in said acceptance, a guarantee of the performance thereof by the borrower therein named; we, said guarantors, further agree to execute and deliver a guarantee of payment of principal and interest of the mortgage~~

~~hereinbefore mentioned, and a guarantee of the performance by the mortgagor of all the terms and conditions contained in such mortgage. All such guarantees shall be in form satisfactory to the counsel for The Prudence Company, Inc.~~ 2407

_____ (L. S.)

_____ (L. S.)

_____ (L. S.)

_____ (L. S.)

THE PRUDENCE COMPANY, INC. 2408

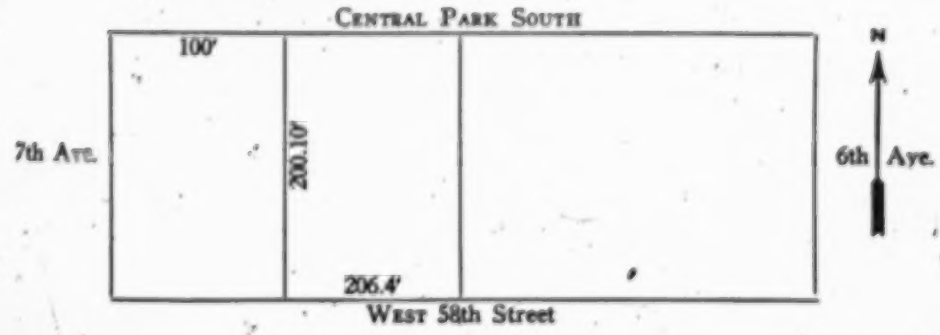
WITH

BUILDING ~~AND PERMANENT~~
LOAN ACCEPTANCE

SCHEDULE "A"

PREMISES:

The mortagage shall cover premises situated in the Borough of Manhattan County of New York, City and State of New York, bounded and described as follows: 2409



2410 BUILDING:

40 story and basement fireproof apartment hotel containing 1,269 rooms and 687 bathrooms

EQUIPMENT:

Complete customary equipment for buildings of this type (Hotel furniture and furnishings not included herein)

SUGGESTIONS AND REMINDERS TO THE BORROWER

2411 1. The borrower should immediately order and furnish to lender survey of premises acceptable to and guaranteed to the Title Company showing conditions at the first advance; and thereafter have the survey continued, (*a*) When exterior walls are completed to height of first story, (*b*) If the building is to be ten or more stories high, again when such exterior walls are completed to approximately one-half the height of building, (*c*) To show enclosure of building, (*d*) Showing completion of building.

2412 2. If there are any unpaid franchise taxes against the borrower or any corporation in the chain of title, the borrower should immediately arrange for the filing of reports with the proper State authorities and the payment of such taxes.

3. The borrower should immediately cause the removal of any violations filed against the premises by any department of the City or State of New York, and dispose of any mechanic's liens or other liens upon or objections to the title of the premises.

Defendants' Exhibit B—Report of Billsborrow

4. The borrower should produce at the closing, tax and water receipts and franchise tax receipts for the current year, with insurance policies now on premises and also any leases, easement, set-back or other agreements affecting the premises. 2413

5. The lender will appreciate having you bring to the attention of any mortgagee receiving money at the closing, that Prudence-Bonds and Prudence Mortgage Certificates secured by first mortgages on improved, income-producing property, are available for reinvestment of such funds.

2414

Defendants' Exhibit B.

PLANTIFF'S EXHIBIT 45 FOR IDENTIFICATION.

November 10th, 1930

Mr. Braislin:

Re: Central Park Properties, Inc.—Central Park So. S/S running thru. to W. 58th Street, 100′ E. of 7th Avenue Manhattan.

On Friday, November 7th, I inspected the above mentioned job and noted some of the missing items as follows: 2415

ORNAMENTAL IRON & BRONZE: 96% complete

There still remained railings in the main dining room and the east breakfast room to be erected; bronze radiator grilles on all of the windows along the 59th Street side; (3) store doors missing out of four on the 58th Street side.

2416 VENTILATION: 96% complete.

There still remained the item of hooking up the fan that takes care of the ventilation of all baths and kitchenettes above the 22nd floor. They also had some men testing the ventilation in the main kitchen on November 7th.

PLASTER: (Both Brown & White) 99 plus and 98¾% respectively.

The walls and ceilings are still to be finished in the stores east of the 58th Street entrance. Plaster patching has not been completed.

2417 HARDWARE: 40% complete.

We have marked "hardware" 40% complete due to the fact that there are no apartment door locks or interior door locks installed above the 12th floor.

TERRAZZO: (82%)

We have marked "terrazzo" 82% due to the fact that the 59th Street side of the lobby floor has yet to receive its final rubbing and polishing and the surface of the 58th Street side has not been ground down.

2418 MARBLE: (95%)

There still remains all the marble cleaning to be done on the first floor; all saddles to be cleaned below the 25th floor; marble radiator tops have not been installed in two apartments on the 18th floor and also one radiator top in one apartment on the 31st floor.

GLASS & GLAZING: (70%)

We have marked the above item 70% due to the fact that there were no mirrors installed

in the chamber doors in any of the apartments above the 10th floor. 2419

METAL SASH: (98%)

We marked the above item 98% complete due to the fact that there is no window hardware installed on any of the windows above the 12th floor. The hardware meant here is that each double hung window receives (2) sash lifts, (1) sash fast and (1) sash pull.

WOOD FLOORS: (50%) complete.

No finished wood floors have been laid in the main dining room as yet and the three small auxiliary dining rooms have not been scraped or finished. 2420

LOBBY DECORATION: 5% complete.

The only work done is that the walls and ceilings have been sized.

MAIN KITCHEN EQUIPMENT: 95% complete.

No sinks have been connected.
The steam fitters were on the job hooking up the heating tables. There are still four tables to be connected. The steam fitters were also hooking up the gas ranges and there are still four of same to be hooked up. 2421

The cabinet gas ovens have not been connected.

MAIN ICE PLANT: 95% complete.

There were men on the job today covering the brine circulating pipes and they had not finished.

2422 CARPENTRY FINISH: (75%) complete.

There still remained the wainscoting of the east and south walls of the breakfast room and also one column that has not been covered. None of the wainscoting has been rubbed down and waxed as yet.

ELECTRIC FIXTURES: 65% complete

There are no electric fixtures in the main lobby, dining room, etc., on the first floor. There are no glass enclosures installed on the chamber ceiling fixtures throughout the building.

2423 REFRIGERATORS: 36% complete.

On Wednesday morning, November 5th, there were no refrigerators connected in any of the apartments above the 14th floor. The plumbers came back to work on Wednesday and by putting a man on each floor, all hooking up refrigerators, they had quite a few hooked up by Friday on all of the floors between the 15th and the 23rd floors.

PAINTING: 75% complete.

2424 None of the apartments or elevator halls above the fifth floor have received a final coat of paint; no stairs have received cement paint on treads and landings.

RADIATORS: 95% complete

No floor plates have been installed on the supply and return connections of any of the radiators throughout the building.

KITCHEN CABINETS: 75% complete. 2425

No drain boards were installed in any of the apartments above the 18th floor.

BATHROOM FIXTURES: 96% complete.

There are the following items lacking in all apartments:—toilet seats, shower curtains and also the cleaning of the plumbing fixtures.

REB.
R. E. BILLSBORROW
ENG. & INSPECTION DEPT.

REB:FG

2426

PLAINTIFF'S EXHIBIT 46 FOR IDENTIFICATION.

November 28th, 1930

Mr. Braislin:—

Re Central Park Properties, Inc.—Central Park South S/S running thru. to West 58th Street, 100' E. of 7th Avenue, Manhattan, N. Y.

In reference to memorandum dated November 21st, we have made an inspection today of the 2427
above job which is itemized as follows:—

ELECTRIC WORK:

There still remains some switches and receptacles to be installed on the first floor.

ORNAMENTAL IRON AND BRONZE:

There are two transoms over the store door entrances on the 58th Street side and also bronze doors leading from the main hall to the east store that are missing.

2428 PLASTER:

There is still the east store on the 58th Street side to be plastered and also plaster patching throughout the building mainly around where the drain boards have just recently been installed.

ELEVATORS:

The men are still working on the elevators and at present only one elevator can be had to reach the top of the building since the other cars are not quite ready.

2429 CEMENT FLOOR & BASE:

The cement floor and base is still to be installed in the east store on the 58th Street side.

METAL SASH:

We have written Mr. Haas, stating that daylight shows through around some of the metal sash and as yet they have not taken care of same.

DOORS HUNG:

2430 In the duplex apartments there is still the pantry and kitchen double-acting doors to be hung.

HARDWARE:

They were installing the hardware today on the 26th to the 30th floors inclusive. Everything above this is yet to be done.

TILE:

There is still tile work to be completed in the niche off the main lobby.

TERRAZZO:

2431

All of the main lobby, etc., is to receive the final rubbing and polishing.

MARBLE:

There still remains the marble saddles in the duplex apartments to be set and also some cleaning of marble on the first floor.

WOOD FLOORS:

The main dining room and three small dining rooms on the first floor are still to be scraped and finished.

2432

GENERAL PAINTING:

All of the apartments and elevator vestibules have yet to receive a final coat of paint. The treads and landings of the service stairs, etc. have not been painted.

ELECTRIC FIXTURES:

There are a few electric fixtures to be installed in the main lobby, dining room, etc.

APARTMENT KITCHEN CABINETS:

There still remains some drain boards especially in the westerly apartments to be installed and also some closure pieces on the top of same.

2433

GLASS & GLAZING:

There are some broken mirrors and also some missing mirrors evidently where special sizes will have to be obtained.

2434 PLUMBING:

There are almost 700 baths that will require toilet seats, shower curtains for showers, etc. They were starting at the top of the building today to install toilet seats.

HEATING & VENTILATING:

Floor registers are still to be installed in the two front apartments (59th Street side on the 22nd floor.)

CARPENTRY FINISH:

2435 There still remains the labor necessary to install the remaining portion of the hardware and the hanging of a few doors.

LOBBY PAINTING:

They are about half through painting the dining room ceiling and there still remains the final coat of paint to go on the dining room walls as well as the final glazing in some of the small rooms off the main foyer.

There is still a fair amount of rubbish to be removed for which we have allowed the sum of $500.00.

2436 REMARKS:

The above estimate does not of course take care of any unpaid balances to the contractors which might become liens.

REB.

R. E. BILLSBORROW

Estimate to Complete

PLAINTIFF'S EXHIBIT 47 FOR IDENTIFICATION. 2437

ESTIMATE TO COMPLETE

Central Park Properties, Inc.

1. Electric Work	$500.00	
2. Ornamental Iron & Bronze	200.00	
3. Plaster	1000.00	
4. Elevators	1500.00	
5. Cement Floor & Base	150.00	
6. Metal Sash & Hardware	500.00	
7. Fireproof Doors Hung & Bucks	200.00	
8. Hardware	4100.00	2438
9. Tile	200.00	
10. Terrazzo	800.00	
11. Marble	200.00	
12. Wood Floors	800.00	
13. General Painting	14000.00	
14. Electric Fixtures	1000.00	
15. Apartment Kit. Cabinets	1000.00	
16. Glass & Glazing	400.00	
17. Heating & Ventilating	350.00	
18. Plumbing	7100.00	
19. Carpentry Finish	1500.00	
20. Lobby Painting	6250.00	
21. Removal of Rubbish	500.00	2439
Total	$42250.00	

REB.

R. E. BILLSBORROW

November 28th, 1930

REB:FG

2440 PLAINTIFF'S EXHIBIT 48 FOR IDENTIFICATION.

Mr. Braislin:—

Re: Central Park Properties, Inc.—Central Park South, S/S running through to West 58th Street, 100' East of 7th Avenue, Manhattan, N. Y.

In reference to memorandum dated November 28th, we have made an inspection today of the above job which is itemized as follows:—

ORNAMENTAL IRON & BRONZE:

2441 There are (2) transoms over store door entrances on the 58th Street side and also (2) screens missing behind the grilles on either side of the 59th Street entrance.

PLASTER:

There is still the east store on the 58th Street side to be browned and white coated and also some miscellaneous patching throughout the building.

BATHROOM FIXTURES:

2442 There is still the item of bathcurtains which the plumber on the job maintains is not included in his contract. This item is evidently going to be left to the leasee to select his own. Our specifications call for shower curtains.

CEMENT FLOOR & BASE:

The cement floor and base is still to be installed in the east store on the 58th Street side.

METAL SASH: 2443

We wrote Mr. Haas on November 8th, stating that daylight showed through around some of the metal sash and he promised to have same taken care of but as yet this has not been done. We are holding $500. on this item until they have taken care of same.

FIREPROOF DOORS:

There are still (6) double-acting doors to be installed in the duplex apartments on the 40th floor; also there are (2) doors (one on the 22nd floor and another on the 23rd floor) 2444 that will have to be replaced as they are in bad shape. We wrote Mr. Haas on November 28th, regarding the door on the 23rd floor. On the job they claim that they have ordered new doors.

HARDWARE:

There is still the installation of all inside door locks in the (4) duplex apartments on the 40th to the 41st floor. The carpenter foreman stated that he thought there were approximately 100 locks missing. This latter figure of course being for the whole building. 2445

TILE:

The floor of the fountain on the first floor has not been laid.

TERRAZZO:

All of the main lobby, etc., is to receive it's final rubbing and polishing.

2446 MARBLE:

There is still some marble base throughout the first floor to be cleaned.

CARPENTRY FINISH:

There still remains the labor of installing the remaining hardware and the hanging of the above mentioned doors.

WOOD FLOORS:

The main dining room and the small dining rooms have yet to be scraped and finished.
2447 They started scraping of the small dining rooms today.

PAINTING:

All of the apartment and elevator vestibules have yet to receive a final coat of paint; also the stair treads and landings are to receive (2) coats of cement paint. The dado stripe should also be painted on the walls of all stairs.

ELECTRIC FIXTURES:

2448 There are no electric fixtures hung in the duplex apartments and there are (16) fixtures missing in the main dining room (the dining room fixtures I believe are on the job but have not been hung as yet.)

KITCHEN CABINETS:

There are (6) drainboards missing and also some closure pieces at the top of the cabinets.

LOBBY PAINTING:

They are now laying out the design on the ceiling of the writing lounge. Otherwise, the first floor painting is pretty well finished.

Estimate to Complete

GLASS & GLAZING: 2449

There is some miscellaneous breakage throughout the building and also some special size mirrors missing.

R. E. BILLSBORROW

December 16th, 1930

REB:FG

PLAINTIFF'S EXHIBIT 49 FOR IDENTIFICATION.

ESTIMATE TO COMPLETE 2450
12/16th/30

Central Park Properties, Incorporated

1.	Ornamental Iron & Bronze	$100.00
2.	Plaster	1000.00
3.	Cement Floor & Base	150.00
4.	Metal Sash & Hardware	500.00
5.	Fireproof Doors Hung & Bucks	200.00
6.	Hardware	500.00
7.	Tile	50.00
8.	Terrazzo	800.00
9.	Marble	100.00
10.	Wood Floors	800.00
11.	General Painting	14000.00
12.	Electric Fixtures	1000.00
13.	Apartment Kit. Cabinets	100.00
14.	Glass & Glazing	200.00
15.	Plumbing	2000.00
16.	Carpentry Finish	500.00
17.	Lobby Painting	1000.00
18.	Removal of Rubbish	500.00
	TOTAL	$23,500.00

2451

2452 PLAINTIFF'S EXHIBIT 50 FOR IDENTIFICATION.

INSPECTION REPORT

Hotels & Apartments (Fireproof)

Location:

Name: Central Park Properties, Inc.—Central Park South, S/S running thru. to W. 58th St.

		Date of Inspection	11/20	11/28	12/4	12/11	12/16
	1	Excavation	√	√	√	√	√
	2	Foundation	√	√	√	√	√
	3	Structural Steel	√	√	√	√	√
	4	Concrete Arches	√	√	√	√	√
	5	Brick Work	√	√	√	√	√
	6	Stone and Granite	√	√	√	√	√
	7	Terra Cotta	√	√	√	√	√
2453	8	Electric Work	99+	99+	99+	99+	√
	9	Orn. Iron and Bronze	98+	99+	99+	99+	99+
	10	Damproofing	√	√	√	√	√
	11	Plumbing, Rough	√	√	√	√	√
	12	Heating, Rough	√	√	√	√	√
	13	Partitions	√	√	√	√	√
	14	Plaster, Brown	99+	99+	99+	99+	99+
	15	Plaster, White	99+	99+	99+	99+	99+
	16	Roofing	√	√	√	√	√
	17	Sheet Metal	√	√	√	√	√
	18	Ventilation	98	98	√	√	√
	19	Elevator Construction	98+	99	99+	99+	√
	20	Elevator Cabs and Signals					√
2454	21	Bathroom Fixtures	98+	98+	99+	√	see report
	22	Cement Floor and Base	99+	99+	99+	99+	99+
	23	~~Wood~~ and Metal Sash	99+	99+	99+	√	see report √
	24	~~Wood~~ and F. P. Doors Hung	99+	99+	99+	99+	99+
	25	Hardware	60	80	90	98	99
	26	Radiators and ~~Boilers~~ N. Y. Steam	99+	99+	√	√	√
	27	Tile	99+	99+	99+	99+	99+
	28	Terrazzo	92	92	92	92	92
	29	Marble	98	98+	99	99+	99+

30	Mail Chute	√	√	√	√	√	2455
31	Carpentry, Rough	√	√	√	√	√	
32	Carpentry, Finish	90	98	99	99+	99+	
33	~~Weatherstrips~~ Wood Floors	85	85	85	85	85	
34	Painting	75	75	75	75	75	
35	Electric Fixtures	90	98	98	98	99	
36	Kitchen Equipment Main	√	√	√	√	√	
37	Refrigerators 473 of Same	√	√	√	√	√	
38	~~Gas Ranges~~ Ice Plant Main	√	√	√	√	√	
39	~~Laundry~~ Equipment Kitchen Cab	85	95	97	99+	99+	
40	Lobby Decorations	60	75	80	88	99	
41	Furnishings						
42	Incinerator	√	√	√	√	√	
43	Glass & Glazing	88	97	97	98	99+	
44	Electric Fix 1st Floor	35	95	95	95	98	2456

PLAINTIFF'S EXHIBIT 63 FOR IDENTIFICATION.

Mr. Braislin:

Re: Central Park Properties, Inc.—
Central Park South, S/S running through to West 58th Street, 100′ E. 7th Avenue Manhattan, N. Y.

I have itemized below a list of the unfinished work in the above building which is general and not an attempt to make a specific list of the work to be done: 2457

ORNAMENTAL IRON & BRONZE:

There are some transoms over store door entrances on the 58th Street side missing. The bronze grill doors on the first floor though hung are not fitted properly.

2458 PLASTER WORK:

The east store on the 58th Street side is to be browned and white coated also miscellaneous patching throughout the entire building is to be done.

BATHROOM FIXTURES:

Shower curtains are missing; missing fittings throughout will have to be replaced; the breakage of medicine cabinet doors taken care of and new bath tubs installed to replace the ones damaged.

2459 CEMENT WORK:

The cement floor and base is still to be installed in the east store on the 58th Street side. Kella stone for carpet nailing will have to be installed throughout the building.

METAL SASH:

Daylight shows through at places where (2) double hung windows are adjoining each other. Glazing beads will have to be replaced where missing as well as window and outside casement door hardware.

2460 DOORS:

There are still some double acting doors to be installed in the duplex apartments and also some damaged fireproof doors on the other floors which will have to be replaced.

HARDWARE:

Finish the installation of the hardware and also to sort out the keys on a suitable key board. There is still the item of closet hardware such as poles and hooks to be completed.

TILE WORK:

The floor of the fountain on the first floor is still to be completed and also the replacement of any damaged portions of tile work throughout the building. 2461

MARBLE:

There is still some marble to be cleaned on the first floor and possibly some replacement of damaged sills, etc., throughout the building.

TERRAZZO:

All of the main lobby, etc., has yet to receive its final rubbing and polishing 2462

CARPENTRY WORK:

There still remains the labor and such items as the installation of hardware, hanging of missing doors, completion of paneling work in the various rooms and the repairs necessary to the woodwork in the lobby and also the fixing of the steps leading to the terraces in the pent house apartments.

WOOD FLOORS:

The floors will have to be gone over and repaired where same are warped. The floors have yet to receive a final coat of varnish. 2463

ELECTRIC WORK:

Supply missing parts, etc., test out lighting system, fire alarm system, etc.

ELEVATORS (Including Signals):

Complete so as to be able to turn same over to owners.

2464 ELECTRIC FIXTURES:

Supply whatever electric fixtures and signs are missing.

ROOFING:

The roof is to be gone over carefully for leaks and completed where necessary together with necessary louvres in top of shaft of incinerator flue. Furnish and install any pieces of terra cotta copings that might be missing.

KITCHEN CABINETS:

2465 Supply all missing drain boards and also missing closure pieces at top and sides of cabinet together with any parts of cabinet that might be missing.

GLASS & GLAZING:

Supply all missing mirrors where necessary together with repairing breakage of glass where necessary.

ELECTROLUX REFRIGERATORS:

2466 The electrolux refrigerators are to be tested out in the individual apartments and made to work properly.

REFRIGERATING SYSTEM: & KITCHEN EQUIPMENT:

The above should be gone over and tested out.

PAINTING:

All of the apartments and the elevator vestibules are still to be finished and also all stair treads and landings to receive (2) coats of cement paint. The walls of all stairs should have a dado stripe. The lobby will have to be gone over and re-touched up.

INCINERATOR: 2467

In the incinerator room in the cellar there is a leakage of water which will either have to be taken care of or properly drained.

MISCELLANEOUS:

All necessary cleaning and removal of rubbish should be taken care of and also any leaks in the steam system, water and drainage systems that may be necessary.

R. E. BILLSBORROW

February 14th, 1931 2468

REB:FG

PLAINTIFF'S EXHIBIT 64 FOR IDENTIFICATION.

Mr. Braislin:—

Re CENTRAL PARK PROPERTIES, INC.—Central Park South, S/S running through to West 58th Street, 100' east of 7th Avenue, Manhattan, N. Y.

The following is a list of the unfinished work in the above building:— 2469

I have not included anything under the items of plumbing and heating, the turning on of the water and steam risers, etc., as they were cut off when we tried to cut down on the steam consumption. I feel that these are more properly an item of maintenance. When the time comes for occupancy, it will of course, be necessary to turn on the water and the steam and also re-adjust the

2470 pressure reducing valves and remove from all of the ventilating fans burlap bagging which I had installed in order to keep out the cold.

WATERPROOFING:—

While this item was supposed to have been completed as far as they maintained, we find now that water seeps in both the incinerator room and elevator pits.

This item should be taken care of by the installation of a membrane waterproofing.

ORNAMENTAL IRON & BRONZE:—

2471 There is a grill missing in the vestibule on the first floor also two transoms over store doors on the 58th Street side and the bronze screen doors opening into the dining room and lobby, etc., should be adjusted.

MASONRY:—

There are some places on the offset roof where the terra cotta copings have been knocked off and should be replaced.

PLUMBING:—

2472 Shower curtains are missing throughout the building and also some miscellaneous fittings such as soap dishes, valves, etc., that were evidently stolen. There is also the item of replacing fixtures that have been damaged during construction.

ELECTRIC WORK:—

Supply and install all missing receptacles, switches, plates, etc., that have been stolen as

well as test out the lighting, fire alarm sys- 2473
tems, etc.

ELEVATORS:—

Elevators are to be complete so as to turn same over to owners.

SHOWER DOORS:—

There are a few pieces of moulding in connection with installation missing.

METAL WINDOWS:—

Daylight shows through at places where two double hung windows are adjoining each 2474
other. Glazing beads will have to be replaced where missing. Some of the hardware on the windows and casement doors leading to offset roofs will have to be replaced.

GLASS:—

Supply all missing and replace all broken and defective mirrors in the mirror doors. Replace all broken glass throughout the building.

SHEET METAL WORK & ROOFING:—

The roof is to be gone over carefully for 2475
leaks. Louvres should be installed in the top of the incinerator flue. Some roofing on offset at the second floor level on the east side should be completed. There is also an opening between the new and the adjoining building from the second to the twelfth floor which should be flashed

2476 GUARANTEE?

CEMENT WORK:—

Install cement floor and base in the east store on 58th Street. This item was never done due to the fact that Lefcourt had expected to rent it to a barber who would have had to rip up the floor for the purpose of installing plumbing fixtures, etc.

Kella stone carpet stripping is to be installed in all places where carpet is to be used.

CABINET WORK IN LOBBY:—

2477 This work has warped in places and should be repaired. The reason for warping (except for applying it too soon in a damp building) could be explained by stating that the work had not been waxed and rubbed down which would have kept out some of the moisture.

DOORS:—

There are some double acting doors to be hung in the duplex apartments and also on some of the lower floors there are some damaged and partly warped doors. Same will
2478 have to be replaced and all doors should be gone over with the idea of adjustment.

PLASTERING:—

There is still the item of plaster patching throughout the building and the finishing of the stores.

CARPENTRY FINISH:—

In some of the rooms the panel moulding on the walls has not been finished and also in places it has been damaged.

FINISHED HARDWARE:— 2479

Complete the installation of lock sets in the duplex apartments. There is also the item of stolen locks throughout the building. The keys should be sorted out on a suitable key board and the owners furnished with master keys for the respective floors, service portions, etc., together with a grand master key for the whole building.

There is also a portion of the closets which have not as yet received clothes hooks and poles.

INTERIOR MARBLE:— 2480

Clean marble work in lobby.

TILE WORK:—

The tile work is practically complete but here and there are broken accessories and patching around switch plates, etc., of a minor nature that will have to be done.

All the TERRAZZO of the main lobby, etc., on the first floor has yet to receive it's final rubbing and polishing.

APARTMENT ICE BOXES:— 2481

These have all been installed and were being tested when we shut off the water so the Consolidated Gas Company will have to finish same. The boxes for ice cubes are on the job.

PAINTING:—

All cement stair landings and treads will have to be finished with two coats of cement paint;

2482 dado stripe on all stairs; exposed facias and portions of elevator shafts to receive one coat of asphaltum; cellar work two coats; three coats of stipple finish on walls in elevator vestibules and apartment rooms; three coats of enamel finish on walls and ceiling of all baths, pantries, kitchens, doors, trim, windows, cement base, etc.; three coats in closets; kalsomine all ceilings except baths and pantries; all necessary signs required by law; floor numbers on all elevator and stair shafts; apartment numbers on all apartments; all service rooms to be suitably lettered. Deduct
2483 for work previously completed, for example the walls of most rooms have received two coats and at present they would have to be sparkled, then receive one coat of size and one coat of stipple finish.

Also rectify all poor kalsomining and painting work. Parts of the main lobby, etc., will have to be touched up and the cabinet wainscoting has yet to be waxed and rubbed down.

Wood Floors:—

The wood floors in the duplex apartments,
2484 main dining room and smaller dining rooms have opened up in some cases and will have to be gone over and also receive their finish coat of varnish and be protected with paper.

Lighting Fixtures:—

Replace all missing and broken fixtures.

Main Kit. Equipment & Refrigerating

PLANT:—

2485

The above should be gone over and made complete in every way.

MEDICINE CABINETS:—

Replace all damaged boxes, mirrors, etc. Also supply glass shelves.

KITCHEN CABINETS, ETC.

There are some drain boards missing and closure pieces on top of hanging closets.

MISCELLANEOUS:—

All necessary cleaning and removal of rubbish should be taken care of and also any leaks in steam, water and drainage system that might occur. 2486

R E B.
R. E. BILLSBORROW

February 20th, 1931

REB:FG

PLAINTIFF'S EXHIBIT 65 FOR IDENTIFICATION.

Mr. Goodnough: 2487

Re: Central Park Properties, Inc.,
New York.

The following work is still to be done in the above building:

1 WATERPROOFING:

All waterproofing is to be completed, particularly the installation of a membrane water-

2488 proofing in the incinerator room and elevator pits.

2 ORNAMENTAL IRON & BRONZE:

All ornamental iron and bronze work is to be completed. There is a grill missing in the vestibule on the first floor, and there are two transoms over store doors on the 58th Street side still to be put in. The bronze screen doors opening into the dining room and lobby, etc. are not properly adjusted, and this should be done.

2489 3 MASONRY:

The masonry work is still incomplete, and the terra cotta copings are incomplete on the offset roof.

4 PLUMBING:

All plumbing work should be completed. There are no shower curtains in the building, and there are still several fittings such as soap dishes, valves, etc., which have not yet been installed. There are several plumbing fixtures which were damaged and should be replaced.

2490 5 ELECTRIC WORK:

The electric work is still incomplete. There are many receptacles, switches, plates and fixtures still to be installed, and the lighting, fire alarm systems, etc. have not yet been tested.

6 ELEVATORS:

All elevator work is to be completed so that the elevators are in running order and entirely completed.

7 SHOWER DOORS: 2491

There are several pieces of moulding in connection with the shower doors which have not yet been installed.

8 METAL WINDOWS:

The installation of metal windows is incomplete where two double hung windows are adjoining each other, no caulking of any kind has been put in the joints. Glazing beads will have to be replaced where necessary. Some of the hardware on the casement doors leading to offset roofs, and on the windows are missing and will have to be put in. 2492

9 GLASS:

All broken glass and all missing glass throughout the building should be replaced and installed. There are still several mirrors in the mirror doors missing, and also several defective mirrors in mirror doors should be supplied with perfect mirrors.

10 SHEET METAL WORK & ROOFING:

All roofing work is to be entirely completed and all work previously done is to be gone over carefully for leaks. Louvres should be installed in the top of the incinerator flue. Some roofing on offset at the second floor level on the east side should be completed. There is also an opening between the new and the adjoining building from the second to the twelfth floor which should be flashed. 2493

11 CEMENT WORK:

All cement work is to be finished. No cement floor or base has yet been installed in the east

2494 store on 58th Street. This work should be done. No carpet stripping has been installed in any part of the building. Carpet stripping should be installed in all rooms and places where carpet is to be used.

12 CABINET WORK IN LOBBY:

The cabinet work in the lobby was never finished in that it was never waxed and rubbed down. For this reason, moisture got into the wood and several pieces have warped so badly that they will need repairs.

2495 13 DOORS:

All doors are to be completed throughout the building. There are some double acting doors to be hung in the duplex apartments, and there are some imperfect and damaged doors on the lower floors which will have to be replaced. The final adjustments on all doors have never been made.

14 PLASTERING:

All plastering is to be finished. There is still a good deal of plaster patching to be done throughout the building, and there is still
2496 plaster work to be finished in the stores.

15 CARPENTRY FINISH:

All carpentry work is to be finished. In some of the rooms the panel moulding has not been finished, or has been so badly damaged in being put up that it will have to be replaced.

16 FINISHED HARDWARE:

All hardware is to be finished and all locks are to be completed throughout the building,

and furnished with keys. There are some lock sets still to be installed in the duplex apartments. The keys to all locks should be sorted out on a suitable key board, and there should be master keys for the respective floors, service portions, etc. together with grand master key for the whole building. Also some of the closets have never received clothes hooks and poles. 2497

17 INTERIOR MARBLE:

The marble work in the lobby is still to be cleaned.

18 TILE WORK: 2498

There is still some tile work to be done, such as patching around switch plates, etc. and the completion of the installation of tile accessories.

19 TERRAZZO:

All of the terrazzo of the main lobby, etc., on the first floor has yet to receive its final rubbing and polishing.

20 APARTMENT ICE BOXES:

All the refrigerators will have to be put in perfect working condition and completely furnished with proper accessories. 2499

21 PAINTING:

All painting work is to be finished. All apartment rooms are to receive three coats of stipple finish on walls. All elevator vestibules are to receive three coats of stipple finish also. All cement stair landings and treads

2500 will have to be finished with two coats of cement paint; dado stripe on all stairs; exposed facias and portions of elevator shafts to receive one coat of asphaltum; cellar work two coats; three coats of enamel finish on walls and ceiling of all baths, pantries, kitchens, doors, trim, windows, cement base, etc.; three coats in closets; kalsomine all ceilings except baths and pantries; all necessary signs required by law; floor numbers on all elevator and stair shafts; apartment numbers on all apartments; all service rooms to be suitably lettered. Deduct for work previously com-
2501 pleted, for example the walls of most rooms have received two coats and at present they would have to be sparkled, then receive one coat of size and one coat of stipple finish. There is also a good deal of painting work and kalsomining work which has been poorly and unsatisfactorily done, such work will have to be redone. Parts of the main lobby etc. will have to be touched up and the cabinet wainscoting will have to be waxed and rubbed down.

22 WOOD FLOORS:

2502 The wood floors in the duplex apartments, main dining room and smaller dining rooms have opened up in some cases and will have to be gone over and also receive their finish coat of varnish and be protected with paper. All wood floors are to be completed.

23 LIGHTING FIXTURES:

All lighting fixtures are to be completed and all broken fixtures are to be replaced.

24 MAIN KITCHEN EQUIPMENT & REFRIGERATING PLANT: 2503

The main kitchen equipment and the refrigerating plant are to be entirely completed, and the refrigerating plant put in running order.

25 MEDICINE CABINETS:

All missing medicine cabinets are to be installed, and all damaged boxes, mirrors and missing glass shelves are to be supplied and replaced.

26 KITCHEN CABINETS: 2504

All kitchen cabinet work is to be completed. There are some drain boards missing, and closure pieces on top of hanging closets are to be installed.

27 MISCELLANEOUS:

All the necessary cleaning and removal of rubbish should be done. The steam, water and drainage systems should be tested for leaks.

February 24th, 1931.

2505

Defendants' Exhibit C.

[LETTERHEAD OF THE PRUDENCE COMPANY, INC.]

November 6th, 1930

Central Park Properties, Inc.,
Mr. Abraham Lefcourt, Pres.,
1359 Broadway,
New York, N. Y.

Re: Central Park South, S/S running through to W. 58th Street, 100' east of 7th Avenue, Manhattan, N. Y.

Gentlemen:–

We think the finish of the kalamein work could be improved upon especially in such cases as the ends of the window sills and the mullion casings.

This has been explained to your superintendent on the job, but so far nothing has been done concerning same.

Trusting you might look into the above matter, we beg to remain

Yours very truly,

THE PRUDENCE COMPANY, INC.
By– R E BILLSBORROW
R. E. Billsborrow
Engineering & Inspection Dept.

REB:FG

Defendants' Exhibit D.

November 7th, 1930. 2509

The Prudence Company, Inc.,
162 Remsen Street,
Brooklyn, N. Y.

Re:– Central Park Properties
58th-59th Sts.

Gentlemen:–

We are in receipt of your favor of the 6th instant, calling our attention to the kalamein work, and we wish to say that the matter has already been remedied, and we trust a re-inspection will find it to your satisfaction. 2510

We are certainly gratified to feel that during the entire construction of the building, this is the first letter we have received from you commenting on any of the work so far installed at the building, and we consider it very good for the reason that we take it for granted that had you found anything to criticize before this, we would have heard from you.

Again assuring you of our willingness to cooperate with you at all times, and thanking you for calling our attention to the kalamein work, we remain 2511

Yours very truly,

CENTRAL PARK PROPERTIES, INC.

By _____

Secretary.

LH:EB.

Defendants' Exhibit E.

2512

November 13th,
1930.

Mr. Henry Mark,
c/o The Prudence Company,
331 Madison Avenue,
New York City.

Dear Mr. Mark:–

At the request of Mr. Louis Haas, we are enclosing herewith, photostatic copy of the contract
2513 of the Consolidated Gas Company of New York covering the ice boxes.

Very truly yours,

CENTRAL PARK PROPERTIES, INC.

By: _____
Vice President

MB:AL

2514

Defendants' Exhibit F.

April 10th, 1930. 2515

Prudence Co.,
162 Remsen Street,
Brooklyn, N. Y.

Re:– Central Park Properties
Att. Mr. W. G. Walters, Eng. Dept.

Gentlemen:–

As requested, we are handing you herewith the following mechanical plans and specifications:–

1. Electric Work
2. Plumbing Work
3. Heating & Ventilating

2516

Also for your use Norwalk Lock Co.'s general catalog, together with a descriptive specification covering the hardware which is to be installed in the above building.

Very truly yours,

CENTRAL PARK PROPERTIES, INC.

By L HAAS
Secretary.

2517

K

EHK:LS

NOTE: Defendants' Exhibits G (the heating and ventilating plans enclosed in the foregoing letter) and H (plan of certain alterations made by The Prudence Company, Inc., to the first floor of the building) are omitted from the printed record pursuant to stipulation and order (*supra*, p. 565).

Defendants' Exhibit I.

2518 AGREEMENT made the 27th day of April, 1931 BETWEEN 58-59 REALTY CORPORATION hereinafter called the builder, and LANDSMAN BROS & SOFFIN, hereinafter called the contractor.*

* * * * * * * * *

Contractor's Address—129 East 124th Street, New York City.

Builder's Address—160 West 59th St, N. Y. City.

Architect—Frank Grad, 1023 Broad Street, Newark, N. J.

2519 *Description of Building*—One forty story hotel building with basement and pent houses, situated at 160-170 West 59th Street and 155-165 West 58th Street, Borough of Manhattan, City of New York —size of plot being 206'4" x 200'10".

Labor and Materials to be furnished by contractor—For finishing all painting, according to the specifications prepared by Frank Grad, Architect, under date of May 31st, 1929, and attached hereto, plus one additional coat of flat paint on walls of all living rooms, chambers, foyers, private halls, public corridors and elevator lobbies, plus two coats of cement floor paint in all closets, stair
2520 halls, stair treads and platforms, servants' rooms, service corridor on second floor, office rooms on mezzanine floor, all cellar floors and all machine and elevator rooms throughout the building, all as proper and necessary in a building of this character.

Contract Price: NINETY THOUSAND EIGHT HUNDRED and 00/100 (90,800) DOLLARS.

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* Formal portions of this contract not material to this suit, are omitted from the printed record, pursuant to stipulation and order (*supra,* p. 565).

Contract for Completion of Painting

It is understood and agreed that the additional coat of flat wall paint on the walls of living rooms, chambers, etc. etc. specified above, is necessary because of the fact that no sparkling has been done between the present prime and second coats and also because the present second coat has lost its adhesive qualities, due to the length of time that has elapsed since its application. 2521

Should builder require painting for the entire building to be completed according to the specification with addenda prepared by the 58-59 Realty Corporation, and attached hereto, instead of specification of Frank Grad, above referred to, there shall be DEDUCTED from the above price the sum of $19,150 2522

made up as follows:

For not washing off kalsomine from all ceilings and painting with three (3) coats of flat paint, *Deduct*	$32,000	
For omitting one coat of flat enamel undercoat and one coat of long oil enamel from walls and ceilings of all guest bathrooms *Deduct*.....	2,700	2523
For omitting two coats of flat wall paint final coat stippled, from the walls of all public corridors and elevator lobbies *Deduct*	4,200	
TOTAL DEDUCTIONS		$38,900

Contract for Completion of Painting

2524 *Additions*:

For sparkling all walls due to the removal of panel moulding throughout the building—*Add*		$5,000
For hanging lining paper, wall paper and applying one coat of gelatin and one coat of varnish thereto on walls and ceilings of all guest bathrooms	*Add*	$2,700.00
2525 For painting required because of alteration to 1st. floor, basement and mezzanine and in service elevator shaft #1, as per specification attached	*Add*	600.00
For hanging lining paper and wall paper on the walls of all public corridors and elevator lobbies and applying one coat of gelatin and one coat of varnish	*Add*	6,500.00
2526 For removing the kalsomine from ceilings of all public corridors and elevator lobbies, varnish sizing where required and rekalsomining with color as selected	*Add*	1,600.00
For removing the kalsomine from ceilings of all furnished apartments—(see list in specification attached), varnish siz-		

ing where required and rekalsomining with color to match walls ..... *Add* 3,350.00 2527

Total Additions $19,750.00

Net Deductions $19,150

For sizing walls, hanging lining paper and wall paper in bed rooms, living rooms and foyers, the following additional unit prices shall prevail, irrespective of size: J H L

Bed rooms	$8.00
Living rooms	9.00
Foyers	3.00

2528

For foyers larger than 9′ x 11′, or larger than 12′ in any one dimension 8.00

These prices are based upon paper costing $1.10 per roll.

Note: The above prices for bed rooms and living rooms, include all spaces adjacent to same, except foyers. 2529

For removing existing kalsomine from living rooms or chamber ceilings, varnish sizing where required, and rekalsomining with color to match walls ..... *Add* *$8 per room,*

this price to include foyers, private halls, passages, en-

2530 tries, etc. adjacent to said rooms.

For painting of wall of adjoining building as called for in Alternate #4 in specification prepared by 58-59 Realty Corporation and attached hereto ..... *Add* $750.00

The price for hanging wall paper in all public corridors and elevator lobbies is based on the use of paper costing not
2531 more than $1.10 per roll plus one coat of gelatin and one coat of varnish. J H L

If Salubra Type paper, costing $1.50 per roll is substituted, also using lining paper and one coat of gelatin and varnish ..... *Add* $1,000.00

The above noted price ($2,700) for applying one coat of size, hanging lining paper and
2532 wall paper, and applying one coat of gelatin and one coat of varnish to all walls and ceilings of all guest bathrooms, is based on the use of wall paper costing not more than $1.10 per roll. If lining paper is omitted, instead of $2,700, the additional price shall be 1,610.40

If Salubra type paper, valued at $1.50 per roll is substituted, also hanging lining paper and applying one (1) coat of gelatin and one (1) coat of varnish, instead of $2,700.00 the additional price shall be 3,400.00 2533

If Salubra type paper and lining paper is used and gelatin and varnish omitted, instead of $2,700, the additional price shall be ..... 2,900.00 J H L 2534

Note: The above prices for additions and/or deductions for changes in guest bathrooms are based upon a total of 687 baths. Should more than one of the above alternates apply to various bathrooms, a pro rata addition and/or deduction based on the 687 bathrooms shall apply to the number of bathrooms so involved.

Unless otherwise agreed, contractor is to perform any extra work, other than overtime work, ordered by the builder, on the basis of actual cost of labor and materials, plus .....% for overhead, plus.....% for profit, plus actual cost of Workmen's Compensation Insurance. 2535

Should overtime work be ordered by the builder, the builder will pay the contractor only the actual labor cost of said overtime work, plus Compensation Insurance on said additional labor.

Any extra or overtime work performed by subcontractors for the contractor is to be paid for by contractor on the same basis as specified above. In the case of overtime work, builder will then

2536 pay the contractor the exact cost of such overtime work performed by the sub-contractor.

such

In the case of / extra work, builder will pay the contractor the cost of such extra work, plus ten per cent (10%) to cover handling charges.

Time of Payment—Eighty five percent (85%) as the work progresses.

The balance within 60 days after the completion of all work, including patching and the furnishing of missing material.

Time of Performance of agreement—Contrac-
2537 tor agrees to completely finish all guest rooms, adjacent spaces and public corridors and elevator lobbies within six (6) weeks from date of this contract. The remaining work, for fully finishing the entire job, shall be completed within two (2) weeks thereafter. The contractor shall employ a sufficient number of men to accomplish the work in this contract within the above stated time, it being distinctly understood that TIME IS OF THE ESSENCE OF THIS CONTRACT.

Contractor guarantees that the quality of the work under this contract will be equal to the best
2538 performed by them anywhere.

58-59 REALTY CORPORATION,
By A. S. LUKACH
A. S. LUKACH
Vice President.
H. A. FREY
President.

LANDSMAN BROS. & SOFFIN.
By JACOB H LANDSMAN

Defendants' Exhibit J.

THIS AGREEMENT 2539

made the 8th day of July One Thousand Nine Hundred and Thirty

BETWEEN

CENTRAL PARK PROPERTIES, INC.

of the State of New York, hereinafter for convenience designated as the Owner,

AND

THE GLOBE PAINTING & DECORATING CO., INC.,
358 Fifth Avenue,
New York City. 2540

hereinafter for convenience designated as the Contractor,

WITNESSETH:

The said Contractor hereby covenants, promises and agrees to and with the said owner for the consideration hereinafter named, to furnish all necessary, good proper and sufficient labor and materials of all kinds whatsoever as necessary for the performing, completing and finishing, including the setting in place of all painting work, etc. required in connection with the construction of 2541
the new building to be erected on premises known and designated as #155-165 West 58th Street and #160-170 West 59th Street, C. P. So. (all numbers inclusive) in the Borough of Manhattan, City of New York, State of New York, agreeably to the Drawings and Specifications (including General Requirements Specifications) prepared by Frank Grad, Architect, which Drawings and Specifications are hereby made a part of this agreement.

• • • • • • • •

Original Painting Contract

2542 And the said Owner hereby covenants, promises and agrees, to and with the said Contractor, in consideration of the covenants and agreements on the part of the Contractor, herein contained, being strictly performed and kept by the Contractor, as specified herein, to pay or cause to be paid unto the said Contractor the sum of Fifty-six Thousand ($56,000.00) Dollars.

. . . . . .

As an inducement for the Owner to enter into this contract with the Contractor, the Contractor guarantees and agrees to have all of the work as contained in this contract, completely finished not 2543 later than October 1st, 1930. Should, however, the building not be in a condition to allow the Contractor to complete his work, then the Contractor agrees to store the material, etc. in his premises until such time as the building is in condition for the Contractor to complete the contract.

ALTERNATE #1—Should the Owner decide to omit the final coat of paint from all tenants' quarters of the building herein mentioned, the Contractor agrees to allow the Owner to deduct the sum of Ten Thousand 2544 Three Hundred Twenty-one ($10,321.00) Dollars from the amount due him under this contract.

ALTERNATE #2—Should the Owner decide to omit the final coat of paint from the public and service corridors and the servants' and service rooms of the building herein men-

tioned, the Contractor agrees to allow the Owner to deduct the sum of Two Thousand Two Hundred Sixty Four ($2,264.00) Dollars from the amount due him under this contract. 2545

ALTERNATE #3—Should the Owner require this Contractor to paint the cement floors and base in the servants' rooms, stairways, service corridors and rooms, etc. of the building herein mentioned, the Owner agrees to pay the Contractor an additional sum of One Thousand Two Hundred Seventy-three ($1,273.00) Dollars. 2546

ALTERNATE #4—Should the Owner require the Contractor to grain the passenger elevator bucks similar in all respects to the graining on the elevator doors, and which graining on the bucks herein mentioned, must meet with the approval of the Owner, then the Owner agrees to pay the Contractor an additional sum of Two Hundred and Twenty ($220.00) Dollars. 2547

UNITS, ETC. IF REQUIRED.

This contractor agrees with the owner that unit prices for material under the scope of this con-

2548 tract shall be as mentioned herein. Should any additional units be required, they will be charged at prices herein mentioned, and should any of the units be omitted by the owner, the contractor agrees to allow a credit at within mentioned prices.

Units and prices are as follows:

		Addition	*Deduction*
1.	Three coats of lead and oil— per sq. ft.	$ .03¾	$ .03¼
2.	Two coats of lead and oil— " " "	.02¾	.02⅜
3.	One coat of size and two coats of flat wall paint, last coats stippled—per sq. ft.	.03½	.03
4.	One coat of size and two coats of flat wall paint, without stippling— per sq. ft.	.03	.02¾
2549 5.	One coat of size and two coats of lead and oil paint— per sq. ft.	.03¼	.02¾
6.	One coat of enamel undercoating, one coat of half undercoating and half enamel, and one coat of enamel— per sq. ft.	.03¾	.03¼
7.	One coat of cement undercoating and two coats of cement paint— per sq. ft.	.03¾	.03½
8.	Two coats of asphaltum paint— " " "	.03	.02½
9.	Stain, filler, one light coat of shellac and two coats of varnish rubbed— per sq. ft.	.14	.12
10.	Glaze finish exclusive of undercoats, per sq. ft.	.06	.05
11.	Two coats of cement paint— " " "	.02½	.02
12.	Enamel finish on exposed pipes, traps, etc., under lavatories, slop sinks, etc.— per fixture	.50	.40
13.	Gold Leaf Numerals with black liner, 2" high, each	.23	.21
14.	Craftex finish per sq. ft.	.20	.17
15.	Marbleizing cement base to imitate		
2550	A—Blue Belge— per lin. ft.	.12	.10
	B—Black and Gold— " " "	.14	.12
16.	Price per room for final coat of paint on walls, trim, etc. in colors selected by tenant, if previous color designated for any particular room is changed—	12.00	11.00

Defendants' Exhibit K.

April 8th 1931. 2551

Bing & Bing
119 West 40th St.,
New York City

Re: 160 West 59th St.
Att. Mr. A. S. Lukach

Gentlemen:

We estimate to furnish labor and material necessary to do the painting on the above job in accordance with the painting specifications for the sum of SIXTY-NINE THOUSAND EIGHT HUNDRED ($69800.00) DOLLARS. For the various alternate 2552
estimates add to the above amount the following prices.

Alternate	#1	add	$1800.00
"	#2	"	$8500.00
"	#3	"	$ 39.00
"	#4	"	$ 375.00
"	#5	"	$ 165.00

Respectfully submitted,

GLOBE PAINTING AND DECORATING CO INC.
By A GLADSTONE
Vice-Pres. 2553

In addition to jobs shown on letter head we have completed

Hotel Brittany
Apartment House 51 Fifth Ave.
Apartment House 325 East 79th St.
City Federation Hotel
120 Wall St.

We started the work on 160 West 59th St.

Defendants' Exhibit L.

2554

[Letterhead of The Prudence Company, Inc.]

January 11, 1930

Central Park Properties, Inc.
1359 Broadway,
New York, N. Y.

Att: Mr. Klein

Re:– Central Park So. S/S thru. to W. 58th St. 100′ E. 7th Av. Manhattan, N. Y.

Gentlemen:–

2555

Will you kindly forward to this office at your earliest convenience a copy of the lobby details for the above building.

We will require same for our approval and records.

Very truly yours,

The Prudence Company, Inc.
By– W. G. Walters
W. G. Walters, Ch. Eng.
Engineering & Inspection Dept.

WGW:FG

2556

Defendants' Exhibit M.

2557

[Letterhead of Frank Grad]

January 21, 1930.

Mr. Louis Haas,
Central Park Properties, Inc.,
1359 Broadway,
New York, N. Y.

Re: 59th Street Hotel,
First floor interior.

My dear Mr. Haas:

With regard to details of the first floor, for the Prudence Company, we are sending you a print of our sheets nos. 15, 16, and a smaller print showing the revised treatment for the corridor and the elimination of wood on the walls. This is the only change that we contemplate making from our original plans. 2558

I think this will be all that is necessary to satisfy the Prudence Company. Sheets nos. 15 and 16, show the wall and ceiling treatments of the public spaces and rooms on the first floor.

Yours very truly,

2559

Frank Grad
By J B Sanger.

JBS:RW

Defendants' Exhibit N.

2560

November 28th, 1930

Mr. Louis Haas, Treasurer
Central Park Properties, Inc.,
1359 Broadway,
New York, N. Y.

Re Central Park South, S/S running through to West 58th Street, 100′ E. of 7th Avenue—Manhattan, N. Y.

Gentlemen:–

We notice that the panel of the bedroom door
2561 on the 23rd floor in the southwest apartment is badly sprung.

Trusting you will have the above mentioned door fixed, we remain

Yours very truly,

THE PRUDENCE COMPANY, INC.
By– R. E. Billsborrow
Engineering & Inspection Dept.

REB:FG

2562

Defendants' Exhibit O.

2563

[Letterhead of the Prudence Company, Inc.]

December 17th, 1930

Mr. Louis Haas, Secretary
Central Park Properties, Inc.
1359 Broadway,
New York, N. Y.

Re Central Park So. through to W. 58th St.
east of 7th Ave., Manhattan, N. Y.

Gentlemen: 2564

We have previously written you regarding the daylight showing around some of the double hung windows in the above building and so far we have not been able to determine whether you have attempted to repair these or not. On going through the building yesterday, I noticed the daylight shows through around the following openings:—

41st Floor:—Southeast apartment.
40th Floor:—Northeast apartment in living room. 2565
38th Floor:—Southwest apartment in bedroom.
37th Floor:—In rear west apartment in bedroom.
36th Floor:—Southwest apartment in bedroom.
35th Floor:—Southwest apartment in bedroom.
34th Floor:—Rear west apartment in bedroom.

Defendants' Exhibit O

2566 33rd Floor:—Southwest apartment in bedroom.
Rear west apartment in living room.
32nd Floor:—In rear west apartment in bedroom.

Of course, the above list is not an examination of the whole building but I think it is sufficient to indicate that someone in your company should make a thorough examination of the windows and have same made tight. This light of which we speak comes in between the casings where two double hung windows occur together.

On the 41st floor I notice there are two bucks
2567 which were evidently reversed by mistake during erection and the opening for the old strike, etc., has never been patched up. I think this should be done before it is forgotten.

In the southwest apartment on the 38th floor there is a particularly poor piece of patching on the wall of the passage leading to the bedroom.

Trusting you will correct the above items as soon as possible, we beg to remain

Yours very truly,

2568 THE PRUDENCE COMPANY, INC.
By R E BILLSBORROW
R. E. Billsborrow
Engineering & Inspection Dept.

REB:FG

Defendants' Exhibit O

[LETTERHEAD OF THE PRUDENCE COMPANY, INC.] 2569

November 28th, 1930

Mr. Louis Haas, Treasurer
Central Park Properties, Inc.,
1359 Broadway,
New York, N. Y.

Re Central Park South, S/S running through to West 58th Street, 100′ E. of 7th Avenue —Manhattan, N. Y.

Gentlemen:— 2570

We notice that the panel of the bedroom door on the 23rd floor in the southwest apartment is badly sprung.

Trusting you will have the above mentioned door fixed, we remain

Yours very truly,

THE PRUDENCE COMPANY, INC.
By R E BILLSBORROW
R. E. Billsborrow
Engineering & Inspection Dept. 2571

REB:FG

Defendants' Exhibit O

2572 [LETTERHEAD OF THE PRUDENCE COMPANY, INC.]

November 21st, 1930

Mr. Louis Haas, Secretary
Central Park Properties, Inc.,
1359 Broadway,
New York, N. Y.

Re:—Central Park So. S/S running thru. to West 58th St. E. of 7th Avenue, N. Y. C.

Gentlemen:—

We think the plaster patching of the ceilings in
2573 the southwest bedrooms on the upper floors, evidently where a temporary water line passed through, could be improved upon. Some of these ceilings are in bad shape and the plasterer should be compelled to do them over; also the plaster patching of the cased openings could be improved upon in a number of cases.

Trusting you might see what could be done about the above condition, we beg to remain

Yours very truly,

THE PRUDENCE COMPANY, INC.
By R E BILLSBORROW
2574 R. E. Billsborrow,
Engineering & Inspection Dept.

REB:FG

Defendants' Exhibit O

[LETTERHEAD OF THE PRUDENCE COMPANY, INC.] 2575

November 30th, 1930

Mr. Louis Haas, Treasurer
Central Park Properties, Inc.,
1359 Broadway,
New York, N. Y.

Re: Central Park So. S/S running thru. to
West 58th St. 100′ east 7th Avenue.

Gentlemen:—

Upon our recent examination of the above building, we find that there are a number of heads over cased openings badly cracked and evidently are being passed up in the plaster patching; also there is a ceiling in the southwest bedroom on the 34th floor that is in rather poor shape. 2576

In the southwest bedroom on one of the upper floors there is an exposed pipe over the entrance door which should be taken care of; also on the 2nd floor in the corridor along the 59th Street side there is another exposed pipe that should be hidden by furring.

On the 39th floor on the northwest offset roof there is a hole in the cement finish alongside of the door to the living room through which water can enter. 2577

Trusting you will give the above items your immediate attention, we beg to remain

Yours very truly,

THE PRUDENCE COMPANY, INC.
By R E BILLSBORROW
R. E. Billsborrow
Engineering & Inspection Dept.

REB:FG

Defendants' Exhibit O

2578 [Letterhead of the Prudence Company, Inc.]

November 8th, 1930

~~Mr. Louis Hass, Sec'y.~~
Central Park Properties, Inc.,
1359 Broadway,
New York, N. Y.

Re: Central Park So. S/S thru. to W. 58th St. 100' East of 7th Avenue, Manhattan, N. Y.

Gentlemen:—

2579 In reply to your letter of November 7th, we might call your attention to the fact that where two double hung windows are adjacent to each other you can see daylight through the mullion in a majority of cases. We also noted at the sides of the windows there is a number of cases where the corner bead has not been returned down to the top of the sill.

Trusting you might go further into this matter, we beg to remain

Yours very truly,

The Prudence Company, Inc.
2580 By R E Billsborrow
R. E. Billsborrow
Engineering & Inspection Dept.

REB:FG

Defendants' Exhibit O

November 10th, 1930. 2581

The Prudence Company, Inc.,
162 Remsen Street,
Brooklyn, N. Y.

Attention of Mr. R. E. Billsborrow
Engineering & Inspection Dept.

Re:—Central Park So.
58th-59th Sts.

Gentlemen:—

We have your favor of the 8th instant, and beg 2582
to say that we immediately referred same to our Superintendent of Construction, instructing him to give the matter his prompt attention.

Trusting you will find this satisfactory, we remain

Yours very truly,

CENTRAL PARK PROPERTIES, INC.
By _____
Secretary.

LH:EB.

2583

Defendants' Exhibit O

2584 [Letterhead of the Prudence Company, Inc.]

April 8th, 1930

Central Park Properties, Inc.,
1359 Broadway,
New York, N. Y.

Attention of Mr. Klein

Re: Central Park So. running thru.
to West 58th Street—Manhattan.

Gentlemen:—

Upon my visit to the above operation on Mon-
2585 day, April 7th, I noticed a load of tubs being delivered to the job.

You will recall our letter of the 15th ultimo, wherein we stipulated that the enamel-ware was to be of acid resisting enamel.

The tubs being delivered are not in accordance with the above stipulation. We therefore, instructed your superintendent to stop deliveries and installation of same.

Trusting you will give the above matter your immediate attention, we remain

Very truly yours,

2586 The Prudence Company, Inc.
By W. G. Walters
W. G. Walters, Ch. Eng.
Engineering & Inspection Dept.

WGW:FG

Note: Defendants' Exhibit P (heating contract) is omitted from the printed record pursuant to stipulation and order (*supra*, p. 565).

Defendants' Exhibit Q.

A. E. LEFCOURT PROPERTIES 2587

CREDITORS' AGREEMENT
FEBRUARY 1, 1931.

—o—

AGREEMENT made as of February 1, 1931, between A. E. LEFCOURT, of New York City, (hereinafter called "Mr. Lefcourt"), party of the first part; ALEF CORPORATION, a Delaware corporation (hereinafter called the "New Corporation"), party of the second part, and the undersigned creditors of Mr. Lefcourt (hereinafter called the "Creditors"), parties of the third part, 2588

WITNESSETH:

WHEREAS, Mr. Lefcourt is indebted to banks, contractors and other creditors on direct indebtedness, endorsements and guaranties, but has assets, which, if properly handled and administered over a course of time, it is hoped will enable Mr. Lefcourt to pay his creditors in full, and

WHEREAS, under present business conditions the liquidation of the assets in sufficient time to enable him to meet his obligations as same become due is doubtful, and 2589

WHEREAS, it is necessary that Mr. Lefcourt and various of his Companies receive an extension of time for the payment of their liabilities in order that no creditor may receive a preference, and in order that the property and business of the said Companies may be conserved in the interest of the Creditors and Mr. Lefcourt,

Defendants' Exhibit Q

2590 NOW, THEREFORE, in consideration of the premises and of the agreements and mutual covenants of the several parties signatory hereto, it is agreed between the parties as follows

FIRST: This agreement is based upon a Plan of Reorganization, a copy of which Plan is annexed hereto and made a part hereof. The Plan contemplates the formation of a New Corporation (the various existing corporations being hereinafter referred to as the Old Companies) and the transfer of assets and liabilities as therein stated, all of which is hereby ratified and approved by
2591 the parties hereto.

SECOND: There shall be a joint committee representing the contractor creditors and the bank creditors consisting of two representatives of each class. The contractors' representatives are hereby designated as Mr. Geo. J. Atwell and Mr. A. J. Rhodes, and the bank representatives are hereby designated as Mr. Milton Billmire and Mr. Arthur Boyd. In the event of the inability to act on the part of any member of the Joint Committee, then other members shall be elected to act in their place. Any new member of the committee repre-
2592 senting the Contractors shall be designated by a majority in number of the five largest contractor creditors, and any new bank representative shall be designated by a majority in number of the three largest bank creditors.

THIRD: The Joint Committee shall have power to carry out the intent and purpose of the aforesaid Plan of Reorganization and in connection therewith (and with the approval of Mr. Lefcourt) may make such modifications or additions thereto

as it may deem advisable, provided, however, that 2593
no such addition or modification shall materially change the rights and benefits conferred upon the creditors under the aforesaid Plan. The Joint Committee shall have power to add to its number; to compromise and pay claims or lawsuits (for or against Mr. Lefcourt or the Companies); to continue or discontinue the operation of the business of any or all of the Old Companies or the New Corporation, and to take any action with respect to the management of the property and assets of any of the Companies which it may decide to be for the best interests of the Creditors. In the event that the Joint Committee shall deem 2594
it advisable to have the New Corporation borrow money for the maintenance and operation of the business, it is agreed that all such loans made to the New Corporation and all expenses and indebtedness incurred in the maintenance or operation of its business after the date of this agreement, shall be entitled to first payment out of the assets of said New Corporation, and it is further agreed that the New Corporation, with the consent of the Committee may secure any of said new loans or obligations incurred by it or for its benefit, by a pledge of any assets of said New Corporation 2595
available for that purpose.

FOURTH: It is contemplated that upon this agreement going into effect, such of the present members of the Board of Directors and officers of the Old Companies as the Committee may request, shall execute and deliver to the Committee their resignations. The Committee shall have power to cause these resignations to be accepted and new Directors or officers to be elected. Members of

2596 the Joint Committee or their nominees may serve as Directors or officers of the Old Companies or the New Corporation.

The Joint Committee shall have full authority to take any and all measures necessary to enable it to manage the business and property of the New Corporation and to supervise and direct the conduct of its affairs and to carry on the business of the New Corporation in such manner and for such length of time as it may deem advisable.

The Joint Committee shall from time to time report to the Creditors as to the condition of the New Corporation.

2597

FIFTH: The Joint Committee shall have full power to pass upon, adjust, fix and determine any and all claims by or against the Old Companies and the New Corporation.

The Joint Committee shall have power to pay in full all current operating expenses of the Old Companies and the New Corporation including all accrued and accruing charges for insurance, for accountancy and for legal services, including counsel for Mr. Lefcourt.

SIXTH: No creditor becoming a party hereto,
2598 shall, until the termination of this agreement, take any action whatsoever against the Old Companies or the New Corporation or Mr. Lefcourt, but shall abide by the provisions of this agreement in all respects. No creditor shall transfer or assign any claim against the Old Companies or the New Corporation, in whole or in part, to any other person or corporation, except subject to the terms of this agreement.

SEVENTH: Upon this agreement being declared effective, the creditors shall immediately forward

Defendants' Exhibit Q

to the New Corporation at 1359 Broadway, New York City, an itemized statement of their claims as of February 1, 1931. As soon as the claims are fixed and determined in pursuance of the terms of this agreement, the New Corporation shall execute and deliver to each of its creditors promissory notes of the New Corporation, dated February 1, 1931, for the amount of the indebtedness so fixed. 2599

Said notes may, at the request of the respective creditors, be issued in such denominations or amounts as each creditor may desire so as to make same available for the creditors needs.

Said notes shall be payable February 1, 1933, and shall bear this notation: "This note may at the option of the maker be renewed for consecutive periods of six months each, but not longer in the aggregate than two years from February 1, 1933." 2600

Interest upon the indebtedness as represented by the notes (and as reduced from time to time by partial payments) shall accrue from February 1, 1932, at the rate of 5% per annum. Should said notes be paid in full, then the amount of accrued interest shall be paid by the Alef Corporation giving to each noteholder its five year notes therefor. 2601

The New Corporation, with the approval of the Committee, shall from time to time make payments on account of the said notes, but all said payments shall be pro rata and the payment indicated on the notes; and in any distribution of income or assets, whether in liquidation or otherwise, all charges, expenses, and indebtedness, which according to the provisions of this agreement, are to be first met, shall be first paid or

2602 proper provision made therefor, and any moneys applicable for distribution upon the notes issued pursuant hereto, shall then be applied pro rata upon such notes until they are paid.

EIGHTH: Each creditor (except as otherwise provided in the Reorganization Plan) shall receive and accept such notes in lieu and stead of its claim and shall simultaneously therewith deliver to the New Corporation for cancellation all notes and other obligations of the Old Companies and/or Mr. Lefcourt which the creditor holds. Should any creditor have discounted or transferred notes
2603 or obligations of the Old Companies or of Mr. Lefcourt with banks or third persons, then notes of the New Corporation will be issued in lieu of the claims represented by such notes and/or obligations only upon their surrender to the New Corporation.

NINTH: For the purpose of carrying out the intent of this agreement, Mr. Lefcourt shall transfer to the members of the Joint Committee as voting trustees the shares of stock of the New Corporation which are to be issued as part consideration for the transfer of assets. The voting
2604 trust shall run for the period of five years or until all of said notes are paid, whichever period shall be the shorter, and shall provide that the voting trustees are to vote for directors of the New Corporation, of whom two shall be representatives of the contractors, two shall be representatives of the banks and one shall be Mr. Lefcourt or his designee.

Wherever reference is made to the operation of the business by the Joint Committee, it is contem-

plated that such operation shall be by the New Corporation which the Joint Committee shall control through its control of the Board of Directors. The only limitations imposed upon the Board of Directors in regard to the sale of any of the assets of the New Corporation are as follows: 2605

(a) None of the real estate of the New Corporation shall be sold prior to February 1, 1933, without the consent of all five directors;

(b) None of the mortgages owned by the New Corporation shall be sold for less than 80% of their face value without consent of all five directors; 2606

(c) None of the securities to be held by the New Corporation shall be sold for less than 80% of their market value at the time same are transferred to the New Corporation, without consent of all five directors.

TENTH: It has been provided that creditors shall present their claims at the office of the New Corporation at 1359 Broadway, New York City.

In connection with claims against the Old Companies or the New Corporation which are based upon guaranties made by Mr. Lefcourt and/or any of the Old Companies, which guaranties have not ripened into valid claims, the New Corporation shall set aside an amount of notes sufficient to cover any contingent claim as and when same ripens into a legal claim. The Joint Committee shall have full power to compromise and adjust any such contingent claims and shall have power 2607

2608 to determine when such contingent claims have ripened into legal claims.

ELEVENTH: The Joint Committee shall have full power to employ and compensate counsel, auditors, accountants, and all necessary assistants, for services rendered since the Committees have been working on this Plan, and to be rendered in and about the matters mentioned in this agreement, including the preparation thereof, and may incur any and all expenses deemed reasonable by the Committee in the premises, including proper compensation to the officers and directors of the
2609 New Corporation, all of which the New Corporation agrees to pay and the same shall be a prior charge upon the assets of the New Corporation.

The Joint Committee may adopt its own rules of procedure and may act either by vote at a meeting or by consent in writing, and may determine from time to time what number of votes or consents of its members shall be deemed to be the act of the Joint Committee.

TWELFTH: No member of the Joint Committee shall, in any way, be held personally responsible for any act, deed or omission by the Joint Com-
2610 mittee of which he is a member, or of himself as a member of said Committee, or for any act or omission of any agent or representative, but shall be responsible only for his own misconduct or malfeasance. No member of said Committee nor the Committee as a whole shall be under liability to render an accounting, but the reports of its accountants shall, at all reasonable times, be available to the Creditors.

THIRTEENTH: Any member of said Committee appointed hereunder may at any time resign upon

written notice to the Chairman of said Committee, and said Committee may fill any vacancy that may occur in said Committee, and such appointee shall have the same authority and powers as though originally named herein. Any member of said Committee who resigns therefrom shall also resign as voting trustee of the stock of the New Corporation, in the manner provided in the voting trust agreement under which he is acting as such trustee. 2611

FOURTEENTH: Upon the payment and satisfaction of all notes and renewals issued pursuant hereto, and the payment of all other obligations provided for herein, or upon proper provision being made therefor satisfactory to said Committee, said Committee and the individual members thereof, or its nominees, will thereupon resign as directors or officers of the New Corporation and will return the management of the property to its former stockholders, and said Committee shall thereupon cease to exist. 2612

FIFTEENTH: A complete copy of this agreement, bearing copies of all signatures, shall be deposited with each member of said Committee, with Simpson, Thacher & Bartlett, 120 Broadway, New York City, and Almuth C. Vandiver, 535 Fifth Avenue, New York City, (counsel to the Contractors' Committee), and Henry W. Pollock, 535 Fifth Avenue, New York City, and Kaye, McDavitt & Scholer, 149 Broadway, New York City, (Counsel to the Banks' Committee), for the inspection of any of the creditors. 2613

SIXTEENTH: This agreement shall go into effect when signed by such creditors of and claimants

against the Old Companies as shall be satisfactory to said Committee and Mr. Lefcourt, and said Committee shall thereupon declare the agreement operative.

SEVENTEENTH: This agreement may be signed in multiple with the same force and effect as if all the signatures thereto were upon one paper. It shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto. Wherever the word "it" is used in referring to a creditor, it shall be taken to include a person male or female, firm or corporation, who is a creditor signatory hereto.

EIGHTEENTH: It is understood that it is the intention of this agreement that said Committee may exercise the powers herein conferred through advice, counsel, or instructions to the directors and officers of the New Corporation, who may be members of said Committee or its nominee and through such powers as may be conferred upon them as voting trustees of stock of the New Corporation.

NINETEENTH: The members of said Committee heretofore appointed and whose appointment is hereby confirmed, join in the execution of this agreement solely for the purpose of evidencing their assent to serve on said Committee and their agreement and concurrence in the provisions hereof.

TWENTIETH: Upon the Committee declaring the Plan effective, and upon the transfer of the assets as herein provided, the New Corporation shall and hereby does assume the payment of all

the liabilities appearing on Schedule A, and agrees 2617
to hold the said Abraham E. Lefcourt harmless of and from any liability thereon or therefor as provided for in this agreement and as noted on Schedule A.

WITNESS, the signatures of the parties hereto as of the day and year first above written.

ALEF CORPORATION,

By_____, Pres.

This agreement is executed and delivered to 2618
the Committee by the undersigned simultaneously with the execution and exchange of the agreement between the undersigned and the Committee herein named, and on the understanding that the claim of the undersigned, hereinafter stated opposite its signature, is to be secured herein with the same force and effect as if the whole of its claim was against Lefcourt, and on the further condition that, in case the said Committee shall not declare the agreement operative prior to April 15th, 1931, the undersigned reserves its right to file a notice of mechanic's lien affecting the premises known as 1619 Broadway, both against the 2619
interest of the owner thereof and of the lessees thereof for the balance then remaining unpaid on its said contract for the furnishing and installing of elevators, and on the further understanding that, if the Committee shall thereafter and before judgment shall be rendered in an action brought to foreclose said lien, declare the agreement op-

2620 erative, the undersigned will thereafter promptly cause said lien to be cancelled and discharged of record.

Claim
$135,948.58

Creditor
OTIS ELEVATOR CO
By W A BLACK
Assistant Treasurer

[CORPORATE SEAL]

2621 NOTE: Defendants' Exhibit R, Mr. Landsman's schedules of labor cost for painting and for papering, has been omitted from the printed record by stipulation, subject to either party's right to submit the same to the Court if so advised.

2622

Stipulation as to Record.

2623

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE PRUDENCE COMPANY, INC.,
Plaintiff,

against

FIDELITY AND DEPOSIT COMPANY OF MARYLAND and AMERICAN BONDING COMPANY OF BALTIMORE,
Defendants.

2624

IT IS HEREBY STIPULATED AND AGREED, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, December , 1934.

ALFRED T. DAVISON,
Attorney for Plaintiff.

THOMAS E. WHITE, 2625
Attorney for Defendants.

Clerk's Certificate.

2626

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE PRUDENCE COMPANY, INC.,
Plaintiff,

against

FIDELITY AND DEPOSIT COMPANY OF MARYLAND and AMERICAN BONDING COMPANY OF BALTIMORE,
Defendants.

2627

I, CHARLES WIESER, Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matters as agreed on by the parties.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed at the City of New York, in the Southern District of New York, this day of December, in the year of
2628 our Lord one thousand nine hundred and thirty-four and of the Independence of the said United States the one hundred and fifty-eighth.

CHARLES WIESER,
Clerk.

[fol. 877] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

THE PRUDENCE COMPANY, INC., Appellee,

against

FIDELITY & DEPOSIT COMPANY OF MARYLAND and AMERICAN BONDING COMPANY OF BALTIMORE, Appellants

Before Manton, Swan and Augustus N. Hand, Circuit Judges

Appeal from the United States District Court for the Southern District of New York. Action to recover damages on a surety bond. Judgment for plaintiff; defendants appeal. Reversed.

Thomas E. White, Esq., Attorney for Appellants. John W. Davis, Esq., Joseph F. Murray, Esq., Thomas E. White, Esq., of Counsel.

Alfred T. Davison, Esq., Attorney for Appellee. Alfred T. Davison, Esq., Martin A. Schenck, Esq., Orrin G. Judd, Esq., of Counsel.

MANTON, Circuit Judge:

The judgment appealed from was entered upon a directed verdict after a trial by a jury of one, pursuant to a stipulation of the parties. The action is upon a surety bond guaranteeing to appellee, holder of a first mortgage lien, the [fol. 878] completion of the apartment hotel, Essex House, in New York City. Central Park Properties, Inc., the mortgagor, was the principal on the bond given by the appellants.

Central Park Properties, Inc., had contracted for a building loan with the appellee, of $6,650,000.00, the building to be erected as provided by certain plans and specifications. Half the amount of the loan was advanced at the time of the closing of the loan, and the balance as the work progressed. Completion of the building was fixed for December 16, 1930.

Appellants' guarantee was for the completion of the building, not for the payment of the loan. On December 5, 1930, a certificate of occupancy having been granted theretofore, the appellee made the final payment under the building loan of $300,000, but by agreement retained

$75,000, which amount was then thought sufficient to complete the building. December 16, 1930, the principal of the mortgage was due, and the principal defaulted; all interest had been paid. December 18, 1930, appellee commenced foreclosure proceedings; January 19, 1931, judgment of foreclosure was entered. On the sale, March 17, 1931, appellee became the buyer for $6,000,000; August 30, 1931, a deficiency judgment was entered against the principal. Claiming that the building was not completed on December 16, 1930, the appellee has recovered a judgment based on the claim that it has suffered damages because of such incompletion.

The owner furnished a surety bond of three million dollars, wherein appellants guaranteed the construction and completion of the building by the principal in accordance [fol. 879] with the building loan agreement and the approved plans and specifications, by the 16th of December, 1930. They promised to make good any and all defaults of the principal. Appellee sued for breach, claiming a default in the obligation to complete the building, and, as damages, claimed (1) items necessarily spent to complete the building; (2) items of omission and substitution by the principal whereby the value of the building had been lessened; and (3) that by reason of the failure to complete the building it was deprived of interest on the principal of the loan from December 16, 1930 to October 1, 1931, together with taxes and insurance paid during part of that period.

Before final payment was made, December 5, 1930, the appellee's employees inspected the building thoroughly, and its own report showed that there was only $42,350 worth of work unfinished; a later report of December 16, 1930, fixed the amount at $23,500. When the final payment was made, the amount of work remaining to be done was disputed, but the principal and the appellee agreed upon the retention of $75,000 by the appellee for completion. The $75,000, however, was used by the appellee to reduce the mortgage principal, as was permissible under the terms of the agreement. It was not until February 14, 1931, that claims of incompletion were presented to appellants, by the appellee, in anything near the presently claimed sums. In April, 1931, the listed items of incompletion amounted to $254,177.29, and submitted items of omissions and substitutions amounting to $125,495.34.

[fol. 880] As a complete defense, the appellants argue that when, on December 5, 1930, the owner and the appellee agreed upon the final payment of the building loan, and the appellee retained $75,000, appellants were discharged. The building loan agreement provided that "the final advance shall not be due and payable until the borrower shall obtain and deliver to the lender the usual certificate of completion issued by the building Department * * *." A certificate of occupancy was issued October 3, 1930, but this was not a certificate of completion. Thus, the final advance was not due by reason of the issuance of the certificate of occupancy. The principal, however, made claims to the final payment when the certificate of occupancy was granted; the appellee refused, but made some further advances on several occasions, and later, did make the final payment as stated. The appellant's contention is that before this payment a controversy arose between the principal and the appellee as to completion, and the consequent right to final payment; that an agreement withholding some of the principal for completion having been reached, this settled the controversy, and so far as completion of the building is concerned, it took the place of the building loan agreement, and that thereafter any recourse which the appellee might have for failure to complete the building was against the principal pursuant to this compromise agreement, and that by virtue of such agreement, the appellants were discharged. The basis of this contention is that the agreement altered and changed the terms of the instruments by which the appellants were bound.

[fol. 881] But making an advance of payment did not, by the terms of the building loan agreement, constitute acceptance or approval of the work done. When the final payment was made, there was no release from the obligation to complete and no agreement was made upon any sum for completion. No compromise agreement took the place of the building loan agreement. The intent to substitute a new executory contract for an existing one must be clearly established. City Natl. Bank v. Fuller, 52 Fed. 2d, 870 (C. C. A. 8). The trial court found that the agreement of December 5, 1930 was in no way an accord and satisfaction. Upon disputed evidence, whether or not the transaction or agreement arived at was a compromise, novation,

or an accord and satisfaction, was a question of fact found against the appellants. Union Indemnity Co. v. United States, 74 Fed. 2d, 645 (C. C. A. 6).

Moreover, the surety bond provided:

"Any waiver or release by the Obligee * * * of any default or omission by the Principal and/or Surety in complying with said building loan agreement or plans and specifications or with the provisions of this bond, must be in writing and signed by the duly authorized officers of the Obligee in order to be binding upon the Obligee and any such waiver or release shall apply only to the item or items specifically so released."

Thus the appellants agreed that appellee would not be affected by releases or waivers unless in writing, and signed by duly authorized officers, specifying the items released. The appellee had a right to rely upon this provision. This defense therefore must fail.

[fol. 882] In the opinion below, the court held that the measure of damages which the appellee could recover is the cost of completion according to the plans and specifications. The appellee was entitled to a completed building for security only. The cost of completion may well be considered as the amount and the measure of damages sustained. In Kidd v. McCormick (83 N. Y. 391), there was an agreement to erect houses on certain lots on which the plaintiff held a bond and mortgage. Plaintiff later agreed to permit subsequent mortgages to have priority over his if the defendants deposited a certain sum of money in a trust company to insure the completion of the houses, which was done. The houses were not completed. The plaintiff completed them, foreclosed his mortgages, bid in the premises, and entered a deficiency judgment. Plaintiff sued to reach the moneys deposited in trust. The trial court found that the houses in their incompleted state were worth less than if finished as agreed, and a judgment was entered for the difference. Affirming on appeal, the court said that he was entitled to be put in as good plight as if the houses had been finished.

"His damages are the difference in the value of the premises, as they were with the houses unfinished, * * *, from what the value of them would have been, had the houses been finished * * * according to the contract."

After saying that this was the measure of the damages, the court pointed out that there were several methods of arriving at the amount. Testimony of three kinds might be received:

(1) experts as to the difference in value;
(2) experts as to the cost of completion; and
(2) actual cost of completion.

[fol. 883] The end to be arrived at, however, was said to be the difference in value between the building furnished and the house as it should have been furnished. If the actual cost of completion does not, in fact, represent the difference in value, it is not to be considered as determinative. In Trainor Co. v. Aetna Casualty & Surety Co. (290 U. S. 47), the mortgagee sued on a bond guaranteeing completion of a building by the mortgagor. The mortgagor failed to complete fully 28 of 52 buildings which he had agreed to erect and complete. The property was located in Pennsylvania, and the court pointed out adherence to the Pennsylvania rule of law as essential, but said:

"Petitioner is entitled to be put in as good position in respect of its debt as it would have occupied if the buildings had been completed in accordance with the terms of the undertaking; and this can be done here only by giving it the amount of the difference between the value of the unfinished buildings and their value as it would have been if completed in accordance with the agreement—see Kidd v. McCormick, supra, p. 398—but exceeding neither the amount due on its debt nor the amount of the bond."

The true measure of damages to this appellee, is the extent to which its security was impaired by the failure to complete in accordance with the plans and specifications. The actual cost of completion may, as observed in Comey v. [fol. 884] United Surety Co. (217 N. Y. 268), make damages more certain, or may be used as proof of actual damages.

Recovery has been allowed in Pennsylvania (Mechanics Trust Co. v. Fidelity & Casualty Co., 304 Pa. 526) on a surety guaranteeing completion of houses by the mortgagor, the court saying:

"The bond upon which defendant was surety imposed an absolute undertaking * * * to complete the dwellings

* * * which, when the principal defaulted, defendant was bound to perform. This construction is supported by numerous authorities. * * * The measure of damages on a bond given to a mortgagee—obligee guaranteeing completion is the cost of completion * * *, and is not limited to the difference between the value of the property in the condition in which it was left and the amount of principal and interest due on the mortgage."

See: Bd. of Education v. Maryland Casualty Co., 27 Fed. 2d, 20 (C. C. A. 3); Purdy v. Massey, 306 Pa. 288; Equitable Trust Co. v. Surety Co., 214 Pa. 159. We understand this to mean that the actual loss, namely, the extent to which the security was impaired, is usually indicated by the cost of completion of the building. This cost may be rebutted by showing excessive or unnecessary expenditures by expert testimony and therefore that the cost is not the damages.

In Norway Plains Savings Bank v. Moors (134 Mass. 129), the defendant covenanted with a mortgagee—bank that certain houses would be erected, as agreed, by the mortgagor. There was a default by the mortgagor. The court held that the measure of the bank's damages was

[fol. 885] "so much of the difference in value between the houses as they were in fact built, and the value they would have had if the foundations had been properly constructed, as added to the value of the houses as in fact built was sufficient to pay the principal of the mortgage debt and the interest due thereon."

We think, therefore, that the measure of damages was the difference between the value of the building on December 16, 1930, as the work had progressed, and the value it would have had on that day if completed strictly in accordance with the plans and specifications.

Appellee claimed, not only for items of incompletion, but also for omissions and substitutions. It is true that these latter items might detract from the value of the building on that date. The contention was advanced below that those changes were made by consent of appellee.

Evidence was offered tending to show that the president of the appellee consented to the substitutions made, and it was excluded. The appellants claimed a parole waiver

of the requirement of the bond that no waiver or release of default or omission was to be valid unless in writing signed by an officer and referring specifically to the item or items waived or released. Such a parole waiver or consent would be legally effective. Northern Assurance Co. v. Grandbein, 183 U. S. 352; Beatty v. Guggenheim Exploration Co., 225 N. Y. 380. If the appellee's president had authority to waive the requirement of a written waiver or consent, excluding such evidence was prejudicial error. Waiver of the condition of the bond and consent to changes [fol. 886] as substitutions or omissions would release the appellant from such items as claims of damages. But since the bond required completion in accordance with the plans and specifications, any omissions or inferior substitutions not consented to by appellee, may be considered as items of damage.

In addition to the bond furnished by the appellants, the building loan agreement required the personal guarantee of the president of the Central Park Properties, Inc., in the amount of One million Dollars. The fifth paragraph of the building loan agreement provided:

"The payment of principal and interest on said bond and mortgage, as and when the same shall become due, and all other payments required to be made hereunder, and the performance by the Borrower of all covenants and agreements herein contained, shall be guaranteed jointly and severally by Abraham E. Lefcourt."

Lefcourt not only guaranteed the completion of the building, but also the payment of principal and interest on the bond and mortgage, and agreed to make good any default of the borrower on its building loan agreement, [fol. 887] and bond or mortgage. The guarantee of the principal and interest read:

"together with payment of principal and interest on the bond and mortgage."

The appellee has recovered interest on the mortgage, and the taxes on the property, and insurance. None of these were within the undertaking of the appellants. The condition of the bond given by the appellants was that if the principal should proceed with the construction of the building so that it was completed in accordance with the building loan agreement and the plans and specifications,

and ready for occupancy not later than December 16, 1930, free and clear of liens; and if the principal paid for the cost of construction and completion, and "if the surety shall indemnify the obligee from loss or damage caused by the failure to construct, pay for and complete the building", and if the surety shall make good any default "in constructing, paying for and completion the building," then performance of the obligation of the bond was satisfied. There is no condition, express or implied, respecting payment of the principal or the interest of the loan, taxes or insurance, and no liability exists therefor. Province Securities Corp. v. Maryland Casualty Co., 269 Mass. 75; United Real Estate Co. v. McDonald, 140 Mo. 605; Smith v. Molleson, 148 N. Y. 23. In the absence of express contract to pay the interest, interest as damages cannot be recovered apart from the principal of the debt. Holden v. Trust Co., 100 U. S. 72; Brewster v. Wakefield, 22 How. 118; Hamilton v. Van Rensselaer, 43 N. Y. 244; O'Brien v. Young, 95 N. Y. 428.

Moreover, under the rule of measure of damages to which we have made reference, and which is here appli- [fol. 888] cable, the interest, taxes or insurance may not be recovered. Kidd v. McCormick, supra; Trainor Co. v. Ætna Casualty Co., supra.

Upon a new trial, which must be had, in establishing appellee's damages, the rule of cost of completion will be the guide. Evidence of experts as to the difference in value showing cost of completion, evidence of actual cost, and experts' testimony as to cost of completion, may be received.

Loss due to items of inferior substitution unless effectively consented to by the appellee may also be recovered.

Since the complaint does not plead and no proof has been received showing loss of rent during the period of incompletion, we need not decide whether or not this appellee might have had a loss of profits because of failure to have a completed building after its entry and possession of the premises. See: Provincetown Securities Corp. v. Maryland Casualty Co., 168 N. E. (Mass.) 257.

Judgment reversed and new trial ordered.

[fol. 888½] Endorsed: United States Circuit Court of Appeals, Second Circuit. The Prudence Company, Inc., v. Fidelity & Deposit Co., etc. (Copy.) Opinion. Manton, Circuit Judge.

[fol. 889] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the Post Office Building in the City of New York, on the 17th day of June, one thousand nine hundred and thirty-five.

Present: Hon. Martin T. Manton, Hon. Thomas W. Swan, Hon. Augustus N. Hand, Circuit Judges.

THE PRUDENCE COMPANY, INC., Plaintiff-Appellee,

vs.

FIDELITY & DEPOSIT COMPANY OF MARYLAND and AMERICAN BONDING COMPANY OF BALTIMORE, Defendants-Appellants

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed with costs and cause remanded for a new trial. Further ordered that execution issue for the collection of said costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 890] Endorsed: United States Circuit Court of Appeals, Second Circuit. The Prudence Company, Inc., vs. Fidelity & Deposit Company of Maryland et al. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed June 17, 1935. William Parkin, Clerk.

[fol. 891] UNITED STATES OF AMERICA,
Southern District of New York:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify

that the foregoing pages, numbered from 1 to 890, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of The Prudence Company, Inc., Plaintiff-Appellee, against Fidelity & Deposit Company of Maryland and American Bonding Company of Baltimore, Defendants-Appellants, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 18th day of July, in the year of our Lord one thousand nine hundred and thirty-five, and of the Independence of the said United States the one hundred and sixtieth.

Wm. Parkin, Clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

[fol. 892] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 14, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, limited to the question of the measure of damages.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.